

HAC9RAH1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

16 CR 760 (RMB)

6 AHMAD KHAN RAHIMI,

7 Defendant.
-----x

8 New York, N.Y.
9 October 12, 2017
10 9:25 a.m.

11 Before:

12 HON. RICHARD M. BERMAN,

13 District Judge
and a jury

14 APPEARANCES

15 JOON H. KIM
16 Acting United States Attorney for the
Southern District of New York
17 EMIL BOVE
18 ANDREW DeFILIPPIS
19 SHAWN CROWLEY
20 Assistant United States Attorneys

21 FEDERAL DEFENDERS OF NEW YORK
22 Attorneys for Defendant
SABRINA SHROFF
MATTHEW LARSEN
MEGHAN GILLIGAN
RACHEL MARTIN

23 ALSO PRESENT: Special Agent Joanna Maroudas, FBI
24 Paralegal Ayushe Misra, U.S. Attorney's Office
Paralegal Dante O'Connell, Federal Defenders of NY
Investigator Anna Finkel, Federal Defenders of NY

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1 (Trial resumed; jury not present).

2 THE COURT: Thanks. Please be seated. We're going to
3 get the jury in just one minute.

4 While we're waiting for the jury I just want to put
5 one note on the record. Somebody asked me from the public
6 about the question of the dumpster. So I looked back in the
7 transcript. The dumpster was actually approved as coming into
8 evidence on October 3, not on October 5 where I think it was
9 reported. And, in fact, I think we even discussed it earlier
10 than that. But in the transcript itself of October 3 it is
11 presented that the government wishes to introduce the dumpster.
12 Defense objected. And I said I would allow the dumpster in.
13 So that's the latest date that that was approved. I just
14 wanted to clear that up. Ready?

15 (Continued on next page)

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DeFusco - direct

1 (Jury present)

2 THE COURT: We're going to pick up. I think we were
3 at the cross-examination of Agent DeFusco or was there still
4 some direct?5 MS. CROWLEY: I have a little bit of direct left,
6 Judge.

7 THE COURT: Okay.

8 DAVID P. DEFUSCO, resumed.

9 THE DEPUTY CLERK: Sir, before we begin I'd like to
10 remind you, you're still under oath.

11 MS. CROWLEY: May I proceed?

12 THE COURT: Yes.

13 MS. CROWLEY: Thank you, your Honor.

14 DIRECT EXAMINATION CONTINUED

15 BY MS. CROWLEY:

16 Q. Good morning.

17 A. Good morning.

18 Q. Before we broke yesterday I think we were talking about the
19 Elizabeth devices that you analyzed and I believe you testified
20 that you analyzed six devices from the Elizabeth scene?

21 A. That is correct.

22 Q. And that one of those devices was functioning during the
23 render-safe procedure in Elizabeth and the remaining five were
24 rendered safe at the FBI laboratory?

25 A. That is correct.

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DeFusco - direct

1 Q. Were you involved in that render-safe procedure?

2 A. Yes, I was.

3 Q. Could you describe how that procedure played out?

4 A. Just in brief, the five devices that were still intact were
5 transported to the FBI academy where we have facilities to
6 disassemble devices remotely. So in that process we were able
7 to utilize tools to remotely render them safe. And by saying
8 that I mean we separate the fusing system from the explosive
9 main charge making it safe to collect that evidence so I can
10 take it to the laboratory and conduct our normal forensic
11 examinations.

12 Q. And was explosive material collected from each of those
13 five devices?

14 A. Yes.

15 Q. Where was the explosive material in each of those devices?

16 A. They were contained inside of each of the containers.

17 There were four containers that consisted of a water bottle
18 container and one container that was a pipe, a galvanized pipe.

19 Q. And was the explosive material that was removed from those
20 containers tested?

21 A. Yes. They were tested, yes.

22 Q. And what did you do with the devices after they were
23 rendered safe?

24 A. After we rendered them safe we packaged them and
25 transported them over to the FBI laboratory where we did our

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DeFusco - direct

1 normal check-in notes, followed our normal standard procedures
2 for checking in evidence to the FBI laboratory.

3 Q. I'd like to talk for a second about the analysis you
4 performed on the device that was rendered safe at the Elizabeth
5 scene. What were the components of that device?

6 A. Looking at the physical evidence that was submitted to the
7 laboratory, the components of that device consisted of an
8 explosive main charge that was identified by our explosive
9 chemists as the primary explosive HMTD. The container for that
10 particular device was a PVC pipe fragments that I analyzed.
11 And the fusing system that was submitted was fragments of hobby
12 fuse which is a nonelectric fusing system or way to initiate an
13 explosive.

14 MS. CROWLEY: Please publish Government Exhibits
15 409-1, 410-1, and 411-1.

16 Q. Are these pieces of evidence that you examined that were
17 collected from Elizabeth?

18 A. Yes. These are items I examined.

19 Q. What were they?

20 A. My opinion these are items that are consistent with a white
21 colored PVC-type container.

22 Q. So that was the container for one of the Elizabeth devices?

23 A. Yes.

24 Q. And I believe you mentioned that the explosive main charge
25 you identified or that was identified was HMTD?

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DeFusco - direct

1 A. Correct.

2 Q. And the fusing -- what was the fusing system in this
3 device?

4 A. The fusing system that was submitted to the laboratory were
5 fragments of green colored hobby fuse, a nonelectric fusing
6 system.

7 MS. CROWLEY: Could we publish 412-1, 413-1 and 414-1.

8 Q. What are these items?

9 A. These are -- item 71, item 75, and item 76 are pieces of
10 fragmented pieces of green colored hobby fuse.

11 MS. CROWLEY: Let's publish Government Exhibits 415-1
12 and 416-1.

13 Q. Are these additional pieces of evidence you analyzed from
14 the device that was rendered safe on the scene of Elizabeth?

15 A. Yes. These are various metal objects that are consistent
16 with being fragmentation. You have nuts and washers and things
17 of that nature.

18 Q. So in your opinion was this fragmentation necessary for
19 that device to function?

20 MS. SHROFF: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: It's not necessary for the IED to
23 function. It's just added fragmentation that causes it to be
24 more dangerous when it explodes.

25 Q. Agent DeFusco what, if anything, did you conclude about how

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DeFusco - direct

1 this first device was configured to detonate?

2 A. In its original configuration prior to the render-safe
3 attempt, it was a PVC-type container that confined the main
4 charge explosive. The electrical fusing system would have been
5 the hobby fuse. And that hobby fuse would have been inserted
6 inside the container. So when you light or initiate the one
7 end of the hobby fuse you're going to have a consistent flame
8 that's going to burn through the hobby fuse. That flame will
9 enter inside the container. Once that flame enters inside the
10 container and comes in contact with the HMTD you're going to
11 have a violent explosion.

12 Q. What, if anything, did you conclude about how this device,
13 in fact, detonated?

14 A. It detonated during the render safe or it exploded during
15 the render-safe procedure while bomb technicians were
16 attempting to separate the main charge explosive from the
17 fusing system, basically removing the explosives from the
18 container.

19 Q. And what was the reaction that caused that detonation in
20 your opinion?

21 A. My opinion, speaking with the bomb technicians on the scene
22 and reading some reports following up, the technique that they
23 used, they tried to use a device to crush the end of the cap,
24 to pop it off to open it so you can pour the explosives out.
25 During that process when they were using that device and it

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DeFusco - direct

1 clamped, it may have caused sufficient friction or heat which
2 caused it to function or caused it -- the energetic material to
3 explode.

4 Q. Okay. You testified that you also analyzed devices made
5 from water bottles; is that correct?

6 A. That is correct, yes.

7 Q. And how many water bottle devices did you analyze?

8 A. There were four total.

9 Q. And, again, those were rendered safe at the FBI laboratory?

10 A. Yes.

11 MS. CROWLEY: Let's publish Government Exhibit 417-1A.

12 Q. Is this a photograph of one of the water bottle devices you
13 rendered safe and analyzed?

14 A. Yes. This is a photograph after the render-safe procedure.
15 This photograph was taken during the checking portion of our
16 analysis. You can see a container on the right that has been
17 wrapped in tape. And on the left side you have green color
18 hobby fuse that is protruding through the cap of the water
19 bottle. That cap had a hole in the top, which we call a
20 priming hole. That's a hole that is drilled in there or cut in
21 there to allow a fusing system to enter inside the container.

22 Q. And was an explosive main charge identified for this
23 device?

24 A. Yes. An explosive was identified. It was a mixture of a
25 low explosive, an improvised black powder, and a high

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DeFusco - direct

1 explosive, primary explosive known as HMTD.

2 Q. And that was inside this water bottle?

3 A. It was inside the container, yes.

4 Q. So what, if anything, did you conclude about how this
5 device was configured to function?

6 A. Again, it would function. You have the container. The
7 fuse would be inside the container, mixed in intimate contact
8 with the explosive main charge in the inside. You light the
9 fuse on one end, the hobby fuse on one end. Again, that flame
10 will transmit through that fuse into the container. Once it
11 goes into the container you will have energetic reaction and an
12 explosion will take place.

13 Q. And with respect to the three remaining water bottle
14 devices that you rendered safe and examined, did those consist
15 of similar components as those you identified here?

16 A. Yes. They were all consistent with one another.

17 Q. Were they the same?

18 A. They were -- they were similar; the same water bottle
19 construction, same type of tape, same type of hobby fuse and
20 same type of explosive. So they were all similar, yes.

21 Q. Do they all contain the HMTD black powder mixture inside?

22 A. Yes, according to our explosive chemists' reports, yes.

23 Q. With respect to all four of these water bottle devices,
24 besides ignition through the hobby fuse, could these water
25 bottle devices have detonated in any other way?

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1 MS. SHROFF: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Again, these are very dangerous items.

4 MS. SHROFF: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: They are filled with a very sensitive
7 primary explosive and a very sensitive improvised low
8 explosive. So, yes, they are susceptible to heat, friction,
9 impact, anything like that could cause it to go off.

10 Q. So if these devices, in your opinion, if these devices had
11 been propelled or thrown, could that have caused them to go
12 off?

13 MS. SHROFF: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: There is a potential. Yes. Absolutely.
16 I would not want someone to throw that device at this wall
17 behind me as I'm sitting here.

18 Q. Let's talk about --

19 MS. SHROFF: Objection, your Honor.

20 THE COURT: Overruled. That's four objections to the
21 same question.

22 Q. Let's talk about the final device that you analyzed from
23 Elizabeth. What was that device comprised of?

24 A. That was a galvanized pipe elbow, refer to it as a pipe
25 elbow.

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DeFusco - direct

1 MS. CROWLEY: Let's publish Government Exhibits 423-1D
2 and 423-1E.

3 Q. Are these photographs of the sixth device you analyzed from
4 Elizabeth?

5 A. That's correct. This is after the render-safe portion of
6 what we did. This is at the point we were checking into
7 evidence.

8 You can see here on the left photograph there is the
9 galvanized pipe wrapped in tape. There was a hole drilled into
10 the side of the metal container to allow a -- a primer hole to
11 allow the hobby fuse to enter. And the explosive main charge
12 was already removed when this picture was taken.

13 Q. And what was the explosive main charge in this device?

14 A. This one was identified as an improvised black powder.

15 Q. When you say improvised, what do you mean?

16 A. It was not a commercially made black powder. So it was
17 not -- according to our explosive chemists' reports it was not
18 a black powder that was purchased from a store. It was
19 improvised or homemade.

20 Q. What, if anything, did you conclude about how this device
21 was configured to function?

22 A. This device was configured to function. You have the
23 explosive main charge in the inside that was susceptible to
24 heat, shock, friction. You had a nonelectric fusing system
25 that was entering through that priming hole. Again, you light

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DeFusco - direct

1 the green hobby fuse. That flame transmits through that hobby
2 fuse. As soon as that flame enters inside of that container,
3 you're going to have an energetic reaction of that low
4 explosive. It's going to burn. It's going to produce those
5 gases. Those gases are going to increase in pressure to the
6 point where the metal container is going to fracture. It's
7 going to explode in all directions.

8 Q. Agent DeFusco, you testified that the 27th Street device
9 and the four water bottle devices from Elizabeth contained both
10 black powder and HMTD; is that correct?

11 A. That is correct.

12 Q. And are those high explosives or low explosives?

13 A. The black powder is a low explosive and the HMTD is a high
14 explosive, a primary high explosive.

15 Q. Now in your 16 years with the FBI have you ever seen this
16 combination of explosive materials used in an IED before?

17 A. Personally, I have never seen the combination of the two
18 together. I have seen black powder on its own and I have seen
19 HMTD on its own. But I've never seen the two of them combined,
20 an improvised low explosive and at a very sensitive high
21 explosive, combined in the same main charge. In my experience
22 I've never seen it.

23 Q. And you testified yesterday that it was your opinion that
24 the 27th Street device was likely configured to ignite
25 through an electric fusing system; is that right?

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DeFusco - direct

1 MS. SHROFF: Objection to the leading.

2 THE COURT: Overruled.

3 THE WITNESS: That is correct.

4 Q. And can you remind us what that electric fusing system was
5 comprised of?

6 A. For the 27th Street device it consisted of an electrical
7 fusing system. And we'll go over the four parts of an
8 electrical fusing system again. A power source, the first
9 thing, was part of the cellphone battery provided the power.
10 The switch in that electrical fusing system was the modified
11 cellular telephone that was modified by removing the vibratory
12 motor and attaching the wires to that contact point.

13 There were wires present. They are the conductors.
14 That's the third element of your fusing system. So you had a
15 pathway for the electricity to flow.

16 And that final part of an electrical fusing system is
17 your initiator. And that's where we had the modified Christmas
18 tree lightbulb that is capable of initiating a low explosive or
19 a primary high explosive.

20 Q. Now, in your opinion, besides ignition through that
21 electric fusing system, could anything else have caused the
22 27th Street device to explode?

23 A. Again, very dangerous configuration. You have a mixture of
24 a improvised low explosive combined with a high explosive
25 primary inside of a container. Again, these types of

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DeFusco - direct

1 explosives are very sensitive to heat, shock, friction. So any
2 type of movement like that or unnecessary movement can cause it
3 to explode. If you provide that stimulus, whether it's an
4 impact, it does have a potential to explode. As a bomb
5 technician I would not, even if you removed that electrical
6 fusing system, I certainly would not go up to that container
7 with a lid on it and try and remove that container by hand
8 because just the simple moving of the container, the friction
9 that you may create from the metals, if you have any of that
10 product on that area there is a potential.

11 It may not happen every time. I liken it to the
12 analogy of a cobra. I'm not going to go up and smack a cobra
13 in the head ten times in the face.

14 MS. SHROFF: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: You may get away with it three or four
17 times, but on that fifth time it may come out and bite you. So
18 it's a very dangerous, in my opinion, it's a very dangerous
19 item.

20 MS. CROWLEY: One moment, your Honor.

21 Nothing further. Thank you.

22 MS. SHROFF: We have no cross, your Honor, but we
23 would ask for a sidebar.

24 THE COURT: Okay.

25 (Continued on next page)

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DeFusco - direct

1 (At the sidebar)

2 MS. SHROFF: As you noted, and I objected throughout
3 his testimony given the repetitive nature of the testimony, the
4 definitional question such as the definition of improvised, low
5 explosive, high explosive, asked over and over again, at least
6 twelve times or more.

7 THE COURT: Which question was asked twelve times?

8 MS. SHROFF: I can actually give you a count if you'd
9 like at some point.10 THE COURT: Tell me one question that was asked twelve
11 times.12 MS. SHROFF: I think the definition of low explosive
13 and high explosive was asked --

14 THE COURT: Twelve times?

15 MS. SHROFF: I think so, but I could be wrong in my
16 count.

17 THE COURT: I think you might be.

18 MS. SHROFF: The same thing for what is improvised.

19 THE COURT: Is that the objection?

20 MS. SHROFF: Yes, your Honor.

21 THE COURT: Repetition?

22 MS. SHROFF: No, no. Not just repetition. Also that
23 essentially there was no firsthand testimony. He testified
24 about what other people in his unit had done.

25 THE COURT: So now we're rearguing the question of

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DeFusco - direct

1 whether he should be called as an expert. I've already ruled
2 on that. He's been testifying as an expert. Your objection is
3 noted to calling him. And it's noted again.

4 MS. SHROFF: And I'm just pointing out at the end of
5 the testimony that all of the evidence he presented to the jury
6 is cumulative and that had been based on all the other people
7 that had worked in the unit.

8 THE COURT: You'd have to be more specific than that.

9 MS. SHROFF: Certainly, your Honor. So he testified
10 about what Mcfarlane did and he didn't do any work on the
11 chemistry part.

12 THE COURT: That's enough of this. If you want to put
13 in a letter, the number of times each question twelve times.

14 MS. SHROFF: I just wanted to make the objection to
15 your Honor.

16 THE COURT: Good. Thanks.

17 (Continued on next page)

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HAC9RAH1

Merritt - direct

1 (In open court)

2 THE COURT: So thanks very much, Mr. DeFusco. You're
3 excused. We're going to have the next government witness.

4 (Witness excused)

5 MS. CROWLEY: Your Honor, the government calls Tsitsi
6 Merritt.

7 TSITSI MERRITT,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 MS. CROWLEY: May I inquire, your Honor?

11 THE COURT: Sure.

12 DIRECT EXAMINATION

13 BY MS. CROWLEY:

14 Q. Good morning, Ms. Merritt.

15 A. Good morning.

16 Q. If I could just ask you to speak into the microphone so the
17 court reporter can hear. Thank you.

18 A. Sure.

19 Q. Where do you live?

20 A. Harlem.

21 Q. And where are you from?

22 A. Zimbabwe.

23 Q. Are you still a citizen of Zimbabwe?

24 A. Yes.

25 Q. What do you do for a living?

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Merritt - direct

1 A. I'm a registered nurse.

2 Q. Do you have any children?

3 A. Yes.

4 Q. How many?

5 A. One.

6 Q. And is it a son or a daughter?

7 A. Son.

8 Q. How old is your son?

9 A. Eleven.

10 Q. Ms. Merritt, I'd like to direct your attention to
11 September 17, 2016. Do you recall what you were doing that
12 evening?

13 A. Yes.

14 Q. Could you tell -- could you describe it for us.

15 A. I was on my way with my friend in her car. I was a
16 passenger. And my son was in the backseat. And we were on our
17 way to Bed Bath & Beyond because we wanted to buy an airfryer.

18 We got turned around. We were actually -- we got
19 lost. We couldn't make a left or a right, so we could only
20 make a U-turn. So we made the -- we went to go down to Fifth
21 Avenue and turned right back on -- we were still on west -- on
22 23rd. And when we were waiting on the traffic light when --

23 Q. And what happened?

24 A. Then we heard like a loud sound. And the car we were in
25 like kind of jumped and was shaking. What I would relate to as

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Merritt - direct

1 an earthquake. We heard people running and screaming. And we
2 were not really sure like what it was.

3 Q. And did anything happen to the car?

4 A. Yes.

5 Q. What happened?

6 A. The windows -- my son was in the backseat. The backseat
7 windows shattered onto him. And some of the -- the rearview
8 mirrors was also damaged. And I'm not sure all the damage that
9 was to the car.

10 Q. What kind of car was it?

11 A. It was a Toyota.

12 Q. What color?

13 A. White.

14 Q. After the car shook did you talk to your son?

15 A. Yes.

16 Q. And was he able to respond to you?

17 A. No.

18 Q. I'm sorry?

19 A. No.

20 MS. CROWLEY: Can you publish Government Exhibit
21 1002-10.

22 Q. Ms. Merritt, do you recognize any of the cars that you see
23 in this frame?

24 A. Yes.

25 Q. Which one?

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Merritt - direct

1 A. The white one. The small white car.

2 Q. In the back?

3 A. Yes.

4 Q. In the middle of the street?

5 A. Yes.

6 Q. And was that the car that you were in that night?

7 A. Yes.

8 MS. CROWLEY: We could play the video.

9 (Video played)

10 MS. CROWLEY: You can take that down.

11 Q. Take your time.

12 A. I'm sorry.

13 Q. That's okay. Let me know if you're ready to proceed.

14 A. Yeah.

15 Q. Are you okay?

16 A. Yes.

17 Q. Ms. Merritt, we saw the car drive away after the windows
18 were knocked out. Who was driving the car?

19 A. Pauline, my friend.

20 Q. And where did she drive to?

21 A. She just drove over, past the traffic light because when
22 the explosion happened she was like in some sort of a daze.
23 And when I was calling her she was not really like answering me
24 or responding appropriately. So I was just like just get out
25 of here because we're not sure what it was. So she was able to

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Merritt - direct

1 drive. And then when we got to like I think it was like a
2 steakhouse then she just was -- she just stopped the car there.
3 She couldn't drive anymore.

4 Q. And what did you do after she stopped the car?

5 A. I was telling my son you're okay. Just calm down. You're
6 okay. And I was trying to call her. We then tried to call --
7 I think we actually called 911. I'm not sure if it was my
8 phone or her phone. And I also ran into the steakhouse and I
9 was trying to ask for help but it seems like nobody really
10 could understand. They were just looking at me and nobody was
11 taking any action. So I got back outside and that's when I saw
12 like the police and everybody else with -- they were running
13 eastbound, you know, towards where the explosion had happened.

14 MS. CROWLEY: Can we publish Government Exhibit

15 202-29A.

16 Q. Do you recognize this photograph?

17 A. Yes.

18 Q. Who is that?

19 A. That's me.

20 Q. And is that after you got out of the car?

21 A. Yes.

22 Q. What did you do after you left the steakhouse?

23 A. I was going back and forth just trying to flag somebody for
24 help, you know, especially for my son. And I was just like --
25 it was kind of hysterical.

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Merritt - direct

1 Q. Was your son able to get out of the car?

2 A. No.

3 Q. Was he eventually removed from the car?

4 A. Yes.

5 Q. How?

6 A. I picked him up and at some point I think the emergency
7 responder took him from me.

8 MS. CROWLEY: Your Honor, the government offers
9 Government Exhibit 202-29A.

10 THE COURT: I'll allow it.

11 (Government's Exhibit 202-29A received in evidence)

12 MS. CROWLEY: And if we could publish for the witness
13 and the Court 202-29B.

14 Q. Do you recognize this photograph?

15 A. Yes.

16 Q. What do we see here?

17 A. That's my son.

18 MS. CROWLEY: Your Honor, the government offers
19 Government Exhibit 202-29B.

20 THE COURT: I'll allow it.

21 (Government's Exhibit 202-29B received in evidence)

22 Q. Is this a photograph of a fireman carrying your son?

23 A. Yes.

24 Q. Where did he carry him to?

25 A. There was like a triage truck that was parked not too far

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Merritt - direct

1 from the ambulances like behind the FDNY ambulance. It was
2 much bigger.

3 Q. And did you go inside that ambulance as well?

4 A. Yes.

5 Q. Were you treated for any injury in that ambulance?

6 A. Yes.

7 Q. What injuries?

8 A. Mostly head.

9 Q. Could you describe what you mean?

10 A. At that time my ears were ringing. A lot of vibration
11 going on in my head. And basically I just felt like I had an
12 alien head, like I couldn't really tell what was going on, but
13 I felt like my head was just much heavier, and I couldn't
14 really grasp how I was feeling as far as my head was concerned.

15 Q. Was your son also treated for injuries in the ambulance?

16 A. Yes.

17 Q. Were you eventually taken to the hospital?

18 A. Yes.

19 Q. Along with your son?

20 A. Yes.

21 Q. And were you both treated for injuries at the hospital?

22 A. Yes.

23 Q. When were you released from the hospital?

24 A. It was the next day, in the morning.

25 Q. And did you and your son receive any follow-up medical

1 HAC9RAH1

Merritt - direct

1 treatment after that?

2 A. Yes.

3 Q. For what?

4 A. We went for counseling and also went just for the follow-up
5 for our ears and also like the -- whatever was going on with
6 our head.

7 MS. CROWLEY: Thank you, your Honor. Nothing further.

8 THE COURT: Counsel.

9 MS. SHROFF: No, your Honor. We have no cross.

10 THE COURT: Thanks, Ms. Merritt. We'll excuse the
11 witness. Thanks very much.

12 (Witness excused)

13 MS. CROWLEY: Your Honor, the government rests.

14 THE COURT: Ms. Shroff, do you need a minute or do you
15 want to respond?

16 MS. SHROFF: Yes, please. Need a minute.

17 THE COURT: So we'll take a five-minute break.

18 (Continued on next page)

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HAC9RAH1

Merritt - direct

1 (Jury not present)

2 THE COURT: Do you want time to yourself?

3 MS. SHROFF: We do, your Honor.

4 THE COURT: Let me know when you're ready.

5 MS. SHROFF: Sure.

6 (Recess)

7 MS. SHROFF: Your Honor, may we just approach for a
8 minute.

9 THE COURT: Yes.

10 (At the sidebar)

11 MS. SHROFF: We're having the obvious question.

12 THE COURT: Whether he testifies or not?

13 MS. SHROFF: Right.

14 THE COURT: He wants to?

15 MS. SHROFF: Let's just say everybody is not on the
16 same page. So if I could -- I know it's not --17 THE COURT: You've probably had this discussion
18 before?

19 MS. SHROFF: Yes, but as you know how trials unroll.

20 THE COURT: Okay.

21 MS. SHROFF: I'm sorry about that.

22 THE COURT: No, no.

23 MS. SHROFF: So I just need --

24 THE COURT: It's a big issue.

25 MS. SHROFF: I don't know if you want to formally give

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Merritt - direct

1 him --

2 THE COURT: If he decides to testify, then I would
3 talk to him without the jury just to make sure he understands
4 that he doesn't have to, he's presumed innocent. If he does
5 talk, you know, whatever he says can be used against him, be
6 subject to cross-examination, the usual stuff. I just want to
7 make sure that he knowingly --

8 MS. SHROFF: I just wanted to make sure if that's your
9 practice.

10 THE COURT: I would do that if there's a dispute. If
11 there is no dispute between him and counsel, so if you just say
12 we call Mr. Rahimi, then I wouldn't do it. But if it's against
13 your advice, then I would do that for a couple of minutes.

14 MR. BOVE: Your Honor, just so I understand. It's
15 your practice that in the event the defendant elects not to
16 testify, you would allocute him personally as to --

17 MS. SHROFF: No. That's not what he said. He said if
18 there's a dispute between --

19 THE COURT: Counsel.

20 MS. SHROFF: -- the defense lawyer.

21 THE COURT: Counsel and the defendant.

22 MR. BOVE: I think that in light of the record that
23 was just created here that there -- I think the phrase was not
24 on the same page.

25 THE COURT: No. No. No.

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Merritt - direct

1 MS. SHROFF: It's a process.

2 THE COURT: It's fluid right now.

3 MS. SHROFF: Just wanted to let you know.

4 THE COURT: We've got the jury instructions. We're
5 handing them out. They are very similar to the instructions
6 that you submitted. I don't think it will take us long to go
7 through them. The verdict sheet looks to be in good shape too.
8 We made a couple of changes to that.

9 MS. SHROFF: Your Honor, was it the Court's thought
10 that if Mr. Rahimi doesn't testify that the government -- that
11 you're going to start summation, because then it would be
12 broken up, right, the summations will not finish today.

13 THE COURT: Here's what I would like to do. Whether
14 he does or doesn't, we would have the charge conference right
15 away. I'm trying to figure out where that's going to lead us
16 timewise. It would be advantageous to -- you can imagine a
17 scenario where you could have both summations today assuming.

18 MS. SHROFF: But then they would have a rebuttal
19 tomorrow.

20 THE COURT: I just don't know what the calendar is
21 going to be. But I don't want to just have the jury here if I
22 can avoid it for ten minutes, or whatever they were here for
23 this morning, and then send them home for the day. That seems
24 inefficient.

25 MS. SHROFF: So let me go back.

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Merritt - direct

1 THE COURT: Yes.

2 MS. SHROFF: Thanks.

3 (Continued on next page)

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1 (In open court; jury not present)

2 THE COURT: Please be seated.

3 MS. SHROFF: Your Honor, he just needs a couple
4 minutes.

5 THE COURT: Okay.

6 MS. SHROFF: Your Honor, in the mean time if we could
7 be -- if we can -- sorry.

8 THE COURT: Ms. Shroff, have you made a decision as to
9 whether you are going to put on a case or not?

10 MS. SHROFF: Mr. Rahimi needs to have five minutes on
11 his own because he has had four lawyers talking to him. So I
12 just want him to have that. Thank you.

13 (Pause)

14 MS. SHROFF: We're ready to go, your Honor.

15 THE COURT: Ms. Shroff.

16 MR. LARSEN: Your Honor, at this time we have a motion
17 under Rule 29 for a judgment of acquittal. The government has
18 failed to produce sufficient evidence of each element of each
19 count and therefore we move for a judgment of acquittal.

20 MR. BOVE: Judge, the defendant's written confession
21 alone touches upon just about each and every element. We also
22 have offered evidence from victims who sustained personal
23 injury. There is evidence of property damage.

24 The expert testimony certainly establishes that both
25 the 23rd Street and the 27th Street devices meet the

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1 definitions of explosives, weapons of mass destruction, and
2 destructive devices and it goes to the definitions we're
3 talking about here. Put simply, and I am happy to elaborate
4 if the Court would like, but we have met all the elements.

5 THE COURT: I also have not only reviewed the
6 indictment but I went through my notes of the evidence and more
7 recently I have been working on the jury instructions, which
8 bring you to almost every element of the case, at least what
9 the legal requirements are. So that application of Rule 29 is
10 denied. There is ample evidence for the case to proceed to the
11 jury.

12 Ms. Shroff, the next question is whether the defense
13 is going to put on an affirmative case or not.

14 MS. SHROFF: We're not, your Honor.

15 THE COURT: That is the decision of Mr. Rahimi as
16 well?

17 MS. SHROFF: That is the decision of Mr. Rahimi as
18 well.

19 THE COURT: So I will call out the jury and I will ask
20 you the same question and if you say that you are resting, then
21 we'll take the next step.

22 MR. BOVE: Your Honor, we do ask that Mr. Rahimi be
23 asked personally that he confirms that he understands he has a
24 right to testify and that he is electing not to exercise that
25 right.

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1 THE COURT: I take Ms. Shroff's word for that. I
2 don't think this is necessary if she says so, as she has, on
3 behalf of Mr. Rahimi. They have just spoken for over an hour,
4 I think, on this very subject. I assume that counsel is
5 speaking for the defendant.

6 Is that right, Ms. Shroff?

7 MS. SHROFF: I appreciate the Court's understanding
8 that we would be thorough and that is correct, your Honor, but
9 thank you.

10 THE COURT: We'll call the jury in.

11 (In open court; jury present)

12 THE COURT: Please be seated.

13 We've been working during this last hour or so and now
14 I am going to call on Ms. Shroff to ask her whether she has an
15 affirmative case to put on or not.

16 Ms. Shroff.

17 MS. SHROFF: Thank you, your Honor. The defense rests
18 at this time.

19 THE COURT: So where that leaves us is we need a
20 little time between now and I will give you a suggested time to
21 go over the jury instructions between myself and counsel. Then
22 we'll move to closing. It is about 11:00. I am going to give
23 you until 1:00 to come back and have your lunch or whatever you
24 want to do in that time and we'll pick up at 1:00.

25 Thanks a lot.

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1 (Jury excused)

2 (In open court; jury not present)

3 THE COURT: Please be seated.

4 We have handed out jury instructions to counsel. I
5 think they are quite similar to the joint instruction that I
6 asked and you gave to us. There is also a joint verdict sheet.
7 Why don't you take some time to look it over and then we'll
8 have our charge conference, let's say, noon for the charge
9 conference.

10 Does that work?

11 MR. BOVE: Yes. Thank you, Judge.

12 MS. SHROFF: That's fine, your Honor.

13 THE COURT: How I do the charge conference is as
14 follows: I do it off the record so to speak initially. That
15 is to say, we walk through all the instructions and the verdict
16 sheet and at the end of that process if either side has an
17 objection still to a particular instruction or phrasing or the
18 verdict sheet, we call in the court reporter and allow
19 everybody to lodge their objections on the record.

20 I will see you back here at 12:00.

21 MS. SHROFF: Your Honor, may we ask about the schedule
22 on summation? I don't know the length of the government's
23 summation. We would ask that either all three summations take
24 place today. Or if the Court is inclined to break them up,
25 that the government not have the rebuttal tomorrow.

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1 THE COURT: Let's see.

2 Do you have a sense of how long your summation might
3 be?

4 MR. BOVE: I am going to try to shorten this up a bit,
5 Judge, but I expect it to be three hours.

6 THE COURT: Three hours for the summation?

7 MR. BOVE: Yes, Judge.

8 MS. SHROFF: So then, your Honor, with all respect, I
9 ask that the defense be allowed to sum up tomorrow.

10 THE COURT: Yes. We'll have to if the government is
11 going to take three hours. There will not be time.

12 Do you have a three-hour summation as well?

13 MS. SHROFF: Three hours and one minute.

14 Kidding.

15 THE COURT: So the answer is yes. Even if we start
16 precisely at 1:00, we'll be at 4:00. So we would break.

17 MS. SHROFF: After the length of their summation, we
18 wouldn't want the rebuttal to be all alone on the following
19 day.

20 THE COURT: I get it.

21 MS. SHROFF: Thank you.

22 THE COURT: In that case, we will do the defense
23 summation first thing tomorrow morning and then rebuttal.

24 MS. SHROFF: And the charge.

25 THE COURT: And the charge.

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1 MS. SHROFF: That's fine.

2 THE COURT: Three-hour summation?

3 MS. SHROFF: I think Mr. Gamal summed up for three
4 hours.

5 THE COURT: That wasn't me.

6 See if you can't trim it a little bit.

7 MR. BOVE: Very well, Judge.

8 THE COURT: I think less is always more in these
9 circumstances.

10 MR. LARSEN: Your Honor, with permission, and I think
11 we did this last week, but can we bring Mr. Rahimi back at 1:10
12 to accommodate his prayer. It is something he can do in a
13 couple minutes. I believe we did this last week.

14 THE COURT: Sure. 1:10 instead of 1:00.

15 MR. LARSEN: Yes.

16 THE COURT: Thank you.

17 There is one thing I wanted to add while you are here.
18 I wanted to mention because it came to me from I don't remember
19 who but I think there was some concern about--

20 MS. SHROFF: Your Honor, Mr. Rahimi is no longer --

21 THE COURT: Yes, he is.

22 MS. SHROFF: I couldn't see him.

23 THE COURT: That there was some concern about family
24 members not being in the audience on one day of this week. I
25 cannot remember. I just want everybody to know that the court

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1 is wide open. Anybody can come in. Any age can come in. They
2 are welcome to do that. The only requirement is that everybody
3 follow the rules and decorum of the courtroom. Sometimes that
4 is difficult for small children. I know that, but nevertheless
5 we ask the guardian, whoever the guardian is with the child, to
6 observe the decorum. And if the child needs to go out or needs
7 to go to the bathroom or needs a drink, etc., instead of the
8 Court saying that, because it can be a bit distraction to
9 others in the courtroom, we ask the guardian to exercise good
10 judgment in that regard. You know, for example, that there is
11 also an overflow courtroom for this case. Sometimes that is a
12 good alternative for people who need to get up and get out
13 because there is no proceeding that is being disturbed.

14 So it is clear when we had a conversation the other
15 day in the courtroom, it is on the record, it is in the
16 transcript of October 10, and what I said to counsel at the
17 side bar was: So I am going to ask defense counsel, probably
18 you Ms. Shroff, to talk to Ms. Peggy Cross-Goldenberg -- who is
19 a member of the defense team by the way -- and who I think is
20 accompanying some family members in the audience with very
21 small children here, and I don't know if they are related to
22 your client or not, but could you just ask her to pass along
23 what the normal decorum practices are in court.

24 That is the heart of what I suggested.

25 Anyway I will see you at 1:10.

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1 By the way, I will see counsel at noon.

2 MR. BOVE: Thank you, Judge.

3 (Recess)

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HAC9RAH3

1 (Jury not present)

2 THE COURT: I'm just going to go over the charges and
3 if anybody feels they want to lodge an objection they can to
4 the changes that are being made or not being made.

5 So in some instances I'm going to probably say one
6 side asked for it and -- anyway, you'll see.

7 The point here is that we had the conversation which I
8 typically do without the reporter and this gives each side the
9 opportunity to state an objection they might have.

10 So the first -- so there's a comment on page nine
11 which I'm going to skip for now and come back to in a minute.

12 So there's a suggestion on page ten, line four. I
13 think it was the defense that suggested we change "should" to
14 "may." I'm not making that change. I take it that's an
15 objection from the defense.

16 MR. LARSEN: Yes, your Honor. Even if the jury
17 doesn't have to be instructed of its power to nullify it always
18 has that power. So we think the word should be "may."

19 THE COURT: I got it.

20 Both parties asked that we insert a request no. 34
21 from the joint proposed instructions. I think we don't need it
22 all. So what I propose to do on page 14 is to insert the
23 following sentence at the end of the first full paragraph where
24 we talked about you infer. And I'm proposing to add from the
25 joint instruction just the sentence that says "an inference is

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1 a logical, factual conclusion which you might reasonably draw
2 from the other facts that have been proved." I think the other
3 concepts are already in the charges. But, in any event, do you
4 both object to that or is that okay with both of you if I make
5 that change?

6 MR. DeFILIPPIS: Fine with the government, your Honor.

7 MR. LARSEN: Your Honor, we would just add the
8 sentence that immediately precedes the sentence which your
9 Honor just read "the matter of drawing inferences from facts in
10 evidence is not a matter of guesswork or speculation."

11 THE COURT: So we talk about guesswork and speculation
12 in the circumstantial evidence section I think. That's why I
13 didn't put it in here.

14 So you can lodge an objection if you like to that.

15 MR. LARSEN: We do.

16 THE COURT: Okay.

17 The proposed by the defense insertion on page 16 after
18 the first full paragraph to define "use" to mean to detonate.
19 I'm not making that change. So that probably is over the
20 defense objection. Is that right?

21 MR. LARSEN: Yes, your Honor. The charges here allege
22 the use of a bomb against persons and property. And we think
23 the clear reading of the word use in the statute and certainly
24 in the indictment means to detonate. That's especially
25 necessary since the instruction does define the other terms in

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1 the statute and use is a term, as it's been alleged in this
2 case, Mr. Rahimi is charged with either detonating or
3 attempting to detonate a bomb.

4 THE COURT: Do you want to be heard?

5 MR. DeFILIPPIS: Your Honor, as we pointed out in the
6 conference, to detonate is a far narrower set of activities
7 than the statute encompasses, not only because the words of the
8 statute are broader but also because, as used in this trial,
9 the word detonate was a very specific industry term that refers
10 to only one type of explosion. And as we explained to your
11 Honor, it's simply inaccurate.

12 THE COURT: So you want to leave it the way it is?

13 MR. DeFILIPPIS: Correct, your Honor.

14 THE COURT: So I'm doing that. It will be over the
15 defense objection.

16 Then defense raised an objection on page 18. The
17 second full paragraph which says "If you find, then the element
18 is satisfied." That comes up about ten times or more, that
19 kind of language. So what I propose to do is add a sentence
20 that says, "Conversely, if you don't find, then the element is
21 not satisfied." So that balances out, I think. Is that okay
22 with you?

23 MR. LARSEN: Yes, Judge.

24 THE COURT: Is that okay with you?

25 MR. DeFILIPPIS: Your Honor, that's fine.

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1 THE COURT: So that comes up again twice on page 19.
2 Comes up again on page 21.

3 On page 22 the defense asks that I insert at the end
4 of the third full paragraph the phrase "in the vicinity of West
5 23rd Street". I believe that's a correct statement and I
6 propose to do that. Is that over your objection?

7 MR. DeFILIPPIS: Yes, your Honor. The government
8 believes that in reciting the elements of the statute inserting
9 the government's factual theory is not appropriate.

10 THE COURT: And I'm doing that also at the defense
11 request on page 23 at the end of the second full paragraph,
12 same terminology, "in the vicinity of West 23rd Street." Is
13 that all right with you?

14 MR. LARSEN: Yes, Judge.

15 THE COURT: Same opposition?

16 MR. DeFILIPPIS: Yes, Judge.

17 THE COURT: Then on page 24 and page 25 and page 26
18 I'm adding that same "conversely" language. Also on 27. And
19 29. And 30.

20 So the defense had a suggestion for page 36 which I am
21 adopting and that is three lines up from the bottom, after the
22 phrase "then you are" it now reads "not to decide Count Seven."
23 I'm adopting the defense suggestion that I insert "required to
24 return a verdict of not guilty on Count Seven." I don't know
25 if the government is objecting to that or not.

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1 MR. DeFILIPPIS: No, your Honor.

2 THE COURT: Okay. That comes up again on the top of
3 page 38, the very first line, instead of the phrase "not to
4 decide Count Eight," "required to return a verdict of not
5 guilty on Count Eight." Is that okay with the defense? That's
6 what you had in mind, right?

7 MR. LARSEN: Yes, Judge.

8 THE COURT: And the government is not opposed.

9 So defense has suggested on page 41 at the end of the
10 first paragraph, not a full paragraph but a carryover
11 paragraph, where this was -- I think this was a defense
12 suggestion, that I add "except as I previously instructed you
13 with regard to Counts Seven and Eight." I forget whose
14 suggestion that was. I think it's a good one though. Is that
15 okay?

16 MR. LARSEN: Yes, Judge.

17 MR. DeFILIPPIS: Your Honor the government would
18 prefer to leave it as is.

19 THE COURT: So this is, though, the concept as you
20 know -- well, okay. That's fine.

21 So the government proposed adding what's called a
22 persons-not-on-trial paragraph. I don't think it fits here.
23 So I'm proposing not to do that. Is that over the government
24 objection?

25 MR. DeFILIPPIS: Yes, your Honor. We think there were

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1 several persons mentioned during the course of the trial that
2 warrant that instruction.

3 THE COURT: And what does the defense think?

4 MR. LARSEN: We agree with the Court.

5 THE COURT: Similar acts. There was a proposal to
6 change this instruction. This is the instruction that I gave
7 earlier I believe in this case, in fact, so I'm sticking with
8 the same language and not making a change to similar acts. Is
9 that okay with you?

10 MR. LARSEN: Yes.

11 THE COURT: And you have -- you still want to add to
12 that?

13 MR. DeFILIPPIS: Your Honor, I don't believe we asked
14 for any change on the similar acts.

15 THE COURT: Good. I thought somebody had.

16 The particular investigative techniques language I'm
17 going to leave as it is. I think it may have been the
18 government that proposed some addition to that. But I think it
19 works as it is. Is that okay with the defense?

20 MR. LARSEN: Yes.

21 THE COURT: How about the government?

22 MR. DeFILIPPIS: Yes, your Honor. As we pointed out,
23 we would prefer the full instruction that we proposed which
24 references the fact that the government is not on trial and
25 that law enforcement techniques are not at issue because the

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1 defense opened on that and it has been raised during the course
2 of the trial.

3 THE COURT: At the bottom of page 44, the stipulation
4 of facts, deleting reference to testimony. There were no
5 stipulations of testimony. That carries over to page 45.

6 I'm deleting also the instruction, defendant's
7 testimony. There was no testimony and there need not be.

8 Over the objection, I believe this is of the defense,
9 on page 46 I'm leaving in the instruction, "Punishment is not
10 to be considered by the jury." I said that earlier in the
11 preliminary instructions. Would that be over your objection?

12 MR. LARSEN: Yes, Judge.

13 THE COURT: And how about the government?

14 MR. DeFILIPPIS: The government believes that
15 instruction is appropriate, your Honor.

16 THE COURT: I'm leaving in the evidence obtained
17 pursuant to search objection. I think that was objected to by
18 the defense; is that right?

19 MR. LARSEN: Yes.

20 THE COURT: How about the government?

21 MR. DeFILIPPIS: Your Honor we were fine with that
22 instruction. We think it's appropriate.

23 THE COURT: I'm also leaving in the sympathy oath as
24 jurors instruction. Did you want to change that?

25 MR. DeFILIPPIS: The government does not, your Honor.

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1 THE COURT: Did you want to change that? You wanted
2 that deleted, I think?

3 MR. LARSEN: Correct.

4 THE COURT: So here on page 50 is the same issue on
5 line two, verdict should be guilty as opposed to verdict may be
6 guilty. I'm going to leave it as it is. And that is over the
7 defense objection, I think, correct?

8 MR. LARSEN: Yes, Judge.

9 THE COURT: How about the government?

10 MR. DeFILIPPIS: The government prefers to leave it as
11 it is, as your Honor suggested.

12 THE COURT: So those are the instructions.

13 There's unanimity on the verdict sheet. So we won't
14 change that.

15 Returning to page nine. For the moment you can assume
16 that that instruction is not changing but I'm still looking at
17 that. So I know the defense wants a change, delete the word
18 "or suspicion," is that right, and the government wants to
19 leave it as it is.

20 MR. DeFILIPPIS: Correct, your Honor.

21 THE COURT: So assume, unless you hear from me, that
22 it will remain the way it is. If there's a change I will let
23 you know.

24 MR. LARSEN: Thank you, Judge. Just one final point
25 on the inference instruction. I believe the Court said --

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1 THE COURT: What page now?

2 MR. LARSEN: This will be inserted as agreed upon.

3 THE COURT: Insertion -- I've lost the page.

4 MR. LARSEN: I'm -- I believe it was 14.

5 THE COURT: I have the rider anyway.

6 MR. LARSEN: Yes. Because we had requested that the
7 preceding sentence about inferences not being a matter of
8 guesswork or speculation be added, and I believe the Court said
9 that that's stated in the circumstantial evidence charge, but I
10 don't believe that it is. It may be elsewhere in the charge,
11 and we'll review it during the government's summation. But we
12 do think it's critical that if we're going to instruct the jury
13 on inferences we have to make clear that inferences are not a
14 matter of guessing or speculating.

15 THE COURT: You wanted that whole instruction in so
16 you're probably okay with that too?

17 MR. DeFILIPPIS: We did, your Honor. So we wouldn't
18 object.

19 THE COURT: So we'll add that sentence just before --
20 immediately before the sentence that I was proposing to add.

21 MR. DeFILIPPIS: We're not going to object to that,
22 your Honor.

23 MR. LARSEN: Thank you.

24 THE COURT: There is one other thing. There's a page
25 here which identifies the experts. Is there anybody that was

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1 left out?

2 MR. DeFILIPPIS: No.

3 THE COURT: Great. Thanks. We're good to go.

4 So are the people here briefly for the McLeod case;
5 and if so, if you could meet me in the robing room with the
6 court reporter. As soon as I finish that, I'll come back out
7 and we'll start with the government's summation.

8 (Continued on next page)

9 THE COURT: Just one addendum. I did review the
10 reasonable doubt instruction. I'm going to leave it the way it
11 exists. It's compatible with the Pattern Jury Instructions.12 So we will call in the jury and hear the government's
13 summation.

14 (Continued on next page)

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Summation - Mr. Bove

1 (Jury present)

2 THE COURT: Please be seated everybody. We'll start
3 with the summations and the government typically goes first.
4 So we'll call on Mr. Bove for that.

5 MR. BOVE: Thank you, your Honor.

6 THE COURT: You bet.

7 MR. BOVE: May I proceed, Judge?

8 THE COURT: Yes.

9 MR. BOVE: Good afternoon, ladies and gentlemen.

10 JURY: Good afternoon.

11 MR. BOVE: Last September a bomb went off at a charity
12 race on a Saturday morning in New Jersey. Less than twelve
13 hours after that a second bomb went off outside a home for the
14 disabled on 23rd Street in Manhattan. Two hours later a
15 third bomb was found less than four blocks away on 27th
16 Street planted near an outdoor hotel and a hotel right next to
17 it encased in glass.18 The FBI rushed to these scenes and so did the first
19 responders. And by some miracle no one was killed. And as the
20 victims were treated, as the dust settled, as debris was
21 cleared from the streets, a series of questions emerged. Who
22 did these things? How? And why?23 Now that you have seen and heard all of the evidence
24 at this trial you know the answers to those questions. Who did
25 these things? This man did these things. The defendant, Ahmad

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Summation - Mr. Bove

1 Khan Rahimi, conducted these bombings.

2 How did he do it? He bought bomb parts. He followed
3 terrorist blueprints. He built bombs in his home. And he
4 carried out this attack in a cold, calculated way with evil in
5 his heart beginning at about 5 a.m. on Saturday, September 17,
6 2016. Why did he do it --

7 THE COURT: Mr. Bove, you can come back up to the
8 podium.

9 MS. SHROFF: Thank you, your Honor.

10 MR. BOVE: You know why he did it. Because he wrote
11 it down. He wrote it down in advance in an open letter
12 directed to the U.S. Government that he knew would be found
13 after his attack. In that letter the defendant described his
14 terrorist motivations, his deadly intent, and his plans for the
15 bombs. That letter is a claim of responsibility for this
16 attack. Because the defendant was proud of his bombs. He was
17 proud of his plan. He wanted credit for his acts of war.

18 These are some of the things that the defendant said
19 in that letter. *Inshallah*. God willing. The sounds of the
20 bombs will be heard in the streets. Gunshots to your police.
21 Death to your oppression.

22 This letter is more than a claim of responsibility.
23 It is a written confession. And it is one of the reasons that
24 you know that the defendant committed these crimes.

25 But, ladies and gentlemen, that's not the only

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Summation - Mr. Bove

1 evidence, not by a long shot. You know from the surveillance
2 video that the defendant conducted these bombings. You know
3 from the evidence of his fingerprints, and his DNA that he did
4 this. You know from his purchases at Amazon, Home Depot, and
5 eBay that he conducted this attack. And you know from the bomb
6 instructions and the terrorist propaganda on his laptop, and
7 his iCloud account that he did the this.

8 All of the evidence shows you that the defendant
9 conducted this attack. An attack on the United States, an
10 attack intended to kill Americans. And an attack designed to
11 terrorize this city.

12 All of the evidence shows that the defendant planned
13 this attack for months. He researched bombs. He built them.
14 And he tested them.

15 And all of the evidence also shows that he carried out
16 the attack on September 17 with tactical precision. You
17 watched a lot of that on video as he carried the bombs through
18 the streets of this city.

19 You watched him make three pauses on his way down to
20 23rd Street. First outside Penn Station. Second, at a bus
21 stop on Eighth Avenue for about 20 minutes. And third, on the
22 steps of a church on 23rd Street right near where he planted
23 that bomb.

24 He made those stops, ladies and gentlemen, because he
25 was on a schedule. He had already set the alarms on the

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Summation - Mr. Bove

1 cellphones that he was using as the detonators. But each time
2 he stopped he watched crowds of New Yorkers walk by. He
3 watched them and he wanted to kill them. He wanted to maximize
4 the death, the devastation, and the destruction caused by this
5 attack.

6 In order to achieve that objective the defendant chose
7 soft targets, defenseless locations, vulnerable victims.
8 People like unsuspecting runners at a charity race. The
9 residents at Selis Manor on 23rd Street. People like Vicky
10 Feria, Cort Cheek, Mary West and her dog Judy. He chose that
11 outdoor restaurant and he chose the hotel. All on the week of
12 the United Nations conference that Eric Ward told you about,
13 one of the busiest times of the year in the city for
14 international visitors and for business at hotels and inns.

15 Now, Ms. Crowley told you at the beginning of this
16 trial that people that the defendant targeted had no idea what
17 was coming. They could not protect themselves from this man's
18 bombs. Only a series of acts of grace saved these people's
19 lives. Interventions by someone or something completely
20 independent of that man's terrorist etiology and his violent
21 intent. Americans.

22 Now, you heard from some of the victims of this crime
23 and you watched some of their experiences on video. Sprinting
24 from the blast. Glass crashing around them. Bleeding from
25 shrapnel. Clinging to their children. Trying to protect their

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Summation - Mr. Bove

1 loved ones, their families.

2 You heard powerful stories of courage during this
3 trial. New Yorkers bent but they did not break in response to
4 this attack.

5 Now I want to pause here and I want to be candid with
6 you right upfront. There are going to be times today when I
7 don't have words to summarize some of the evidence that you saw
8 relating to this attack. Cort Cheek made this point last week
9 when he said that nothing compares to what happened to him that
10 night. I know that you remember what the victims said and how
11 they said it.

12 These people are clearly still impacted now by what
13 this man did that night. Mary West told you that directly and
14 it could not have been more obvious from Arkeida Wilson's body
15 language on that witness stand that even today she's haunted by
16 what happened that night.

17 And I have no words for the video that you saw of
18 Ms. Wilson and her friends walking into the defendant's bomb on
19 23rd Street as it went off.

20 But the defense chose some words. They chose some
21 words to describe the evidence in this case. That happened
22 during opening statements. And the words they chose were
23 "tiresome" and "repetitive." Here's the transcript is up on
24 the screen now of what was said during opening statements.

25 Now the defendant has no burden at this trial. He's

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Summation - Mr. Bove

1 presumed innocent. We bear the burden. We do is so proudly
2 and we must prove that the defendant committed these crimes
3 beyond a reasonable doubt.

4 But when the defense speaks you're entitled to listen,
5 scrutinize what they say, think about whether it makes sense,
6 it's consistent with what you're seeing and hearing at the
7 trial.

8 And so here they did choose to speak and these are the
9 words they chose: "tiresome, repetitive."

10 Now, it's natural for the government and the defense
11 lawyers to disagree during the course of a criminal trial. Of
12 course. And I think this might have to be one of those times.
13 Because I submit to you that there was nothing tiresome about
14 the proof that you have heard over the last week-and-a-half.
15 And you have been attentive jurors. We have watched you pay
16 careful attention throughout this trial. We thank you and we
17 appreciate the effort so far.

18 So think about it. Was it tiresome to hear from the
19 defendant's victims? Was it tiresome to hear from people like
20 Eric Ward and Adam Krell who told you about how the defendant's
21 bomb ripped through 23rd Street destroying buildings and
22 businesses?

23 Was it tiresome to hear from law enforcement witnesses
24 who told you about how they rushed to these scenes, worked 24/7
25 to collect evidence of the defendant's bombs so they could be

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Summation - Mr. Bove

1 || presented to you at this trial?

Was it tiresome to review the evidence of the terrorist propaganda and the bomb making instructions on this man's laptop and in his iCloud account?

5 Did you find it tiresome to hear from bomb technicians
6 who diffused bombs left by the defendant at the crime scenes in
7 this case, men like Detective Hallik who went to 27th Street,
8 recovered the defendant's bomb, diffused it, made it safe,
9 protected the city, and preserved that evidence so that you
10 could see it during this trial? Was that tiresome?

11 Now you can be sure that the defendant wishes you
12 hadn't seen and heard all that evidence because it proves that
13 he did these things. But tiresome? I think not.

14 Now there's a little bit of room for common ground, a
15 potential agreement between the defense and I on the issue of
16 whether the evidence was repetitive because when you go to a
17 trial and in the first two hours you're presented with the
18 defendant's ringing confession, it's pretty clear, as it was
19 here, that this is not a close case. But there was more
20 evidence. A lot more.

21 Let's talk about the video. Ladies and gentlemen,
22 there's not just one video in evidence of the defendant
23 committing this crime. There are 45 videos from September 17
24 of 2016 of the defendant carrying these bombs around. That's
25 just one day.

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Summation - Mr. Bove

1 There are twelve more videos the next day as he walked
2 around Penn Station and back to New Jersey with a backpack full
3 of six more bombs.

4 So maybe the evidence is repetitive in the sense that
5 the defendant was repeatedly caught on video committing this
6 crime.

7 Let's talk about the fingerprints. There's not just
8 one fingerprint identified to the defendant in this case on the
9 evidence. There are more than 40. There are over 20
10 fingerprints from that man on the bombs. So maybe the evidence
11 is repetitive in the sense that the defendant repeatedly
12 touched these bombs as he designed and built them and that
13 proof has been presented to you now.

14 How about the DNA? Well after you've heard that the
15 defendant has a written confession, is caught on video, after
16 you've heard about the fingerprints, maybe it's a little
17 repetitive to learn -- certainly not surprising -- that his DNA
18 is on the cellphones that he used as bomb detonators, a bomb
19 detonator at Seaside and a bomb detonator for the bomb he left
20 at 27th Street.

21 But think about what that forensic evidence means,
22 ladies and gentlemen. That shows you that the defendant -- he
23 didn't just carry these bombs around in bags like you saw on
24 the video. That's not all he did. The fingerprints and the
25 DNA prove to you that he made the bombs because his

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Summation - Mr. Bove

1 fingerprints and DNA are on the components. The fingerprints
2 are inside the cellphones. That shows you that the defendant
3 designed these things, he built them, and because he did those
4 two things you know that he understood their destructive
5 potential. He knew that he had built deadly devices. He
6 intended to kill people with those devices.

7 So, ladies and gentlemen, tiresome and repetitive are
8 not the words that I would have chosen. That's not a fair
9 accurate -- that's not a fair summary of what the evidence has
10 shown or the way it's come in at this trial. And the words
11 that I'm going to ask you to focus on during my closing
12 statement today are the ones I started with. Who? How? And
13 why?

14 I'm going to ask you to think about those questions as
15 I talk about the evidence. Because this is my opportunity to
16 show you how it all fits together. The evidence came in during
17 the trial in bits and pieces. Not always chronologically. And
18 this is my chance to walk you through it step by step. And I
19 ask that as I do that you keep these questions in mind. Who?
20 How? And why?

21 And if you do that, and you continue to pay careful
22 attention to the evidence, then I submit to you that at the end
23 of your deliberations after you've listened to all the
24 summations, listened to Judge Berman's instructions, I submit
25 to you that only one word will suffice, only one word will be

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Summation - Mr. Bove

1 appropriate. Guilty. The defendant is guilty. He is guilty
2 beyond a reasonable doubt and he is guilty of each and every
3 charge in the indictment.

4 So this is a little roadmap for what I plan to cover
5 during the rest of my closing statement. We're going to talk
6 about the evidence. We're going to start with the defendant's
7 letter, talk about what that means.

8 Next I'm going to talk a little bit about the evidence
9 of his radicalization. When I say that what I mean is the
10 evidence that the defendant started to think about jihad, holy
11 war against the United States. He started to pursue martyrdom.
12 He wanted to die in a terrorist attack. You've seen that
13 evidence that it dates back to 2012.

14 Then we're going to discuss how he planned the attack.
15 That process started in at least May of 2016 with that Home
16 Depot surveillance video that you saw. And so we're going to
17 walk through that proof.

18 Next we'll talk about the attack itself. We'll start
19 at 5 a.m. on September 17 and move forward as the defendant
20 planted the bombs in Seaside, 23rd Street, 27th Street, and
21 then back at the Elizabeth Train Station.

22 Next we'll talk about the evidence that was picked up
23 after his arrest, a little bit more about the letter, but
24 perhaps more importantly at that point in the closing the
25 things that were found at his house at 104 Elmora Avenue.

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Summation - Mr. Bove

1 After that we're going to talk in more detail about
2 the bombs themselves. I'm going summarize for you some of the
3 evidence that you heard over the last two days from the people
4 from the Quantico lab, the experts.

5 After we've talked about the evidence I'm going to
6 finish by talking about each of the eight charges.

7 Before we get there I will give you a little preview.

8 The charges in the indictment are basically arranged
9 in three categories. There are three charges that relate to
10 the 23rd Street bomb. Count One charges the defendant with
11 using a weapon of mass destruction. Count Three charges him
12 with bombing a place of public use. And Count Four charges him
13 with destruction of property by explosive.

14 Judge Berman is going to give you the instructions on
15 the law. That controls no matter what I say today. And he's
16 also going to give you a verdict sheet that will help guide
17 your deliberations. But as I talk about the evidence please
18 keep in mind that this is the first category of charges.

19 The second category of charges relates to the 27th
20 Street bomb. So Count Two charges the defendant with use and
21 attempted use of a weapon of mass destruction. And Count Five
22 charges the defendant with attempted destruction of property by
23 explosive.

24 Now, it's clear, ladies and gentlemen, the bomb at
25 27th Street didn't go off. But the defendant clearly

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Summation - Mr. Bove

1 designed it to. He designed it to go off. He designed it to
2 kill people. And he designed it to destroy property. Those
3 were his intentions when he left that device near the mailbox
4 on 27th Street. And it's no defense for him that the bomb
5 was exposed, found by Jane Schreibman, 911 was called and that
6 the NYPD was able to diffuse that bomb. That's because Counts
7 Two and Five, these 27th Street counts, charge attempts.

8 I expect that Judge Berman will instruct you that the
9 defendant is guilty of an attempt if he intended to commit the
10 crime and if he took a substantial step towards committing it.
11 And you know that he did both of those things. He designed
12 that bomb to kill. He knew it would work. He knew it would
13 work because the Seaside bomb had gone off and the 23rd
14 Street bomb had gone off. His bomb making plans worked. He
15 knew that when he put the 27th Street bomb there.

16 And he did not take just one substantial step. He
17 took many. He took many steps all the way to 27th Street and
18 he took many steps in building that bomb. He left it there
19 that night fully capable of exploding and intending that it
20 would explode. And that's what matters, I submit to you, for
21 the 27th Street charges.

22 Now the last set of charges relate to the
23 transportation, use, and possession of these bombs. Separate
24 and apart from the bombing that happened that the defendant
25 conducted at 23rd Street and the one that he attempted to

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1 conduct at 27th Street, he created grave dangers by carrying
2 these bombs around, including in Manhattan, grave dangers for
3 all of the people who were on the street that night as he made
4 his way down Eighth Avenue and all of the people that were
5 still on the street as he went from 23rd to 27th Street.

6 He walked those bombs through busy Penn Station. You
7 know that those bombs could have gone off at any moment because
8 you heard about their contents. You heard this morning from
9 Special Agent DeFusco about the HMTD, that highly volatile
10 primary explosive that was packed in the 27th Street device.
11 Bombs could have gone off at any time just because of the
12 explosives the defendant made. And because of that, he's
13 charged with these additional crimes relating to having carried
14 them around.

15 There is no miracle defense here, ladies and
16 gentlemen. It's not a defense that no one died. It's not a
17 defense that the bombs didn't go off while the defendant
18 transported them to 23rd Street and 27th Street. And it's
19 not a defense that the 27th Street bomb was diffused before
20 it could explode.

21 The law prohibits attempted bombings and
22 transportation of bombs and certain types of explosives because
23 the risks that these activities create are simply unacceptable.
24 They can't be tolerated. And because the defendant created
25 those additional risks when he transported the bombs, he is

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Summation - Mr. Bove

1 guilty of these additional charges in that third category.

2 So with that preview let's talk about the evidence
3 and, as I said, we're going to start with his letter.

4 This is page one of the letter and right in the
5 introduction the defendant makes clear this is about a conflict
6 between good and evil. You can see that in the top box.

7 The next line, ladies and gentlemen, is how you know
8 that this was an attack that was designed to target the United
9 States and Americans in the city. The letter is directed in
10 writing to you, USA government, and it makes an accusation
11 about slaughter of Mujahideen. And you know what that word
12 means from Mr. Fouad. It means people engaged in jihad.

13 On page two the defendant makes a reference to Anwar
14 al-Awlaki. Says Anwar al-Awlaki has spoken the truth. And you
15 know who al-Awlaki is from Aaron Zelin. He was one of the
16 senior leaders of al-Qaeda in the Arabian Peninsula. He gave
17 lectures and promoted attacks on American civilians. Some of
18 the parts of the transcript are here on the screen. Zelin told
19 you that al-Awlaki was putting out messages online calling for
20 jihad against the United States.

21 And why are we talking about this right now? Because
22 these are the names, this is one of them, of the people who the
23 defendant included in his letter. These are the people who the
24 defendant found motivating, whose guidance he found, in his
25 word, clear. These people and their messages explain what the

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Summation - Mr. Bove

1 defendant intended by this attack. Evidence of the defendant's
2 motive comes from them and helps to explain why he did what he
3 did.

4 You also learned about *Inspire* magazine at this trial,
5 a publication by al-Qaeda in the Arabian Peninsula by the same
6 organization that al-Awlaki was affiliated with. And this is
7 an issue that was found on the defendant's laptop. It's the
8 first issue of the magazine by AQAP. And al-Awlaki was one of
9 the guest speakers, guest writers. And what does he say?
10 That's in the bottom image here, "We will bomb and we will
11 assassinate." This is the message that the defendant found
12 persuasive. This is what drove him in conducting the attacks
13 that he did.

14 A little bit further down on page two the defendant
15 gave an example of someone who conducted the type of attack
16 that he would later emulate. He gives the example of Nidal
17 Hasan. It says al-Awlaki has spoken the truth. Stay behind
18 and fight like Nidal Hasan. And you know from Mr. Zelin who
19 Hasan is.

20 Hasan conducted an attack in Texas in 2009. He killed
21 13 people and injured up to 30 more in an attack with a rifle.
22 This is a lone wolf attack, just like the one that the
23 defendant committed. And you can tell from the letter that
24 these are the types of things he was thinking about as he put
25 his plan together.

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Summation - Mr. Bove

1 Hasan was actually praised in *Inspire* magazine for the
2 lone wolf attack that he committed. What do you have to offer
3 to the lone Mujahid? You're asking about the past, I believe
4 that through *Inspire* we have passed the idea and tried to
5 support it. The idea of these lone wolf attacks. The
6 defendant was reading *Inspire* magazine. He downloaded it to
7 think about what steps he wanted to take in support of his
8 jihad and he chose to follow the example of Nidal Hasan.

9 Page three of the letter. Let's start at the top of
10 the page. There's a reference to the FBI and Homeland
11 Security. Basically what this says, ladies and gentlemen, is
12 that the defendant got concerned at some point that he was
13 under surveillance. He was concerned that law enforcement was
14 watching him. And then he explained what he did after that
15 concern arose. He prayed that jihad would not be taken away
16 from him. He begged for shahadat, for martyrdom.

17 So what does this mean? It means that the defendant
18 was worried that he was going to be arrested before he could
19 conduct this attack. He became concerned that law enforcement
20 was watching him so he had to take some steps to try and avoid
21 being arrested so he could carry this out. The defendant never
22 planned to fully get away with this. He wanted to claim
23 responsibility for it. But he was also worried that law
24 enforcement would stop him before he did it.

25 Next page of the letter the defendant talks about

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Summation - Mr. Bove

1 going back to sham. You know from Mr. Zelin that that's a
2 reference to ISIS, ISIS controlled territory.

3 So the defendant here is describing some interest in
4 going to fight overseas; that he was thinking about going to
5 fight with a terrorist organization abroad. But this incident
6 when he got concerned that law enforcement was watching him, it
7 caused him to think that maybe I can't travel. Maybe I won't
8 make it that far.

9 And so in the next paragraph he says I looked for
10 guidance and guidance came. Again, from al-Awlaki. And then
11 he includes a second name brother Adnani, who is Abu Mohammed
12 al-Adnani, a member of ISIS.

13 What guidance did he get from them? What was his
14 understanding of what those leaders wanted him to do? Attack
15 the kuffar in their backyard; kuffar, a reference to
16 nonbelievers, meaning not Muslims. And he felt motivated by
17 the messages of these terrorists to conduct an attack here in
18 the United States.

19 Here a little bit of the evidence that was presented
20 to you about ISIS. ISIS's primary goal is to establish
21 caliphate, an the Islamic State throughout the entire world.
22 There are also people who are motivated and directed by ISIS to
23 conduct attacks and inspires their attacks in the United
24 States.

25 Here's a little bit about Adnani, somebody who was

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Summation - Mr. Bove

1 encouraging, on behalf of ISIS, people to conduct lone wolf
2 attacks like the one that the defendant conducted.

3 So now the defendant is describing how he reacted to
4 this incident, the concern that he had that he could be
5 arrested before he got to actually conduct an attack. What did
6 he do? Everything had to be done quietly and I had to lie to
7 cover up my tracks.

8 So we'll talk about some of the evidence of how he did
9 that. But this is a letter that described exactly his thought
10 process as he planned this attack.

11 Now I said the letter was a claim of responsibility
12 and that's actually an important word in the propaganda of
13 AQAP. This is another article from *Inspire* magazine that talks
14 about this important question of claims of responsibility. In
15 the middle here you can see it says: If it is a martyrdom
16 operation then it is 90 percent claimed. What do they mean by
17 that? That it would be obvious if the person conducting an
18 attack died, who he was and why he did it. But then the next
19 suggestion is: Placing a piece of paper near the location of
20 the operation. And that, ladies and gentlemen, is just what
21 the defendant did. That's what this letter is. It's a claim
22 of responsibility.

23 Here's page six of the letter. The defendant is still
24 talking about being blocked from traveling to fight overseas on
25 behalf of a terrorist organization. He's expressing

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Summation - Mr. Bove

1 frustration that he wasn't allowed to meet death overseas.

2 And so this is what he decided to do. "Your people
3 will hear pipe bombs, pressure cooker bombs going off in the
4 streets they plan to run a mile." You saw those pipe bombs in
5 Seaside Park. You saw the pressure cooker bombs at 23rd
6 Street and 27th Street. That reference to the streets they
7 plan to run a mile is a reference to this race in Seaside Park
8 that Mr. Costello told you about.

9 And then at the bottom of the screen you can see a
10 reference to you Osama bin Laden. "Brother Osama bin Laden
11 offered you truce."

12 This is what you learned. This is the evidence about
13 bin Laden. That he issued two fatwas in 1996 and 1998
14 declaring war against the United States, calling for attacks
15 against American civilians. This is the type of message that
16 motivated the defendant to do what he did.

17 And this reference to a truce, it's directly out of
18 *Inspire* magazine. This is the article where that truce is
19 described that bin Laden offered.

20 And what does this show you? It shows you that the
21 defendant didn't just download these magazines. He was an
22 active consumer of this propaganda. He read it carefully. He
23 thought about what it meant and he internalized it. He
24 internalized it and he acted on it.

25 And this is the final letter, the final page of the

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Summation - Mr. Bove

1 letter. "The sounds of the bombs will be heard in the streets.
2 Gunshots to your police. Death to your oppression."

3 So that's the written confession, ladies and
4 gentlemen. That is a written-out plan of exactly what the
5 defendant intended to do and that's exactly what he did.

6 So let's talk now about how his state of mind changed
7 when he decided to carry out this attack. And the evidence
8 shows that he made that decision long before he wrote the
9 letter.

10 This is an e-mail from July of 2012. And you can see
11 in the from line that the subscriber name on this account is
12 Ahmad Rahimi. The e-mail is ahmadkakar@live.com. The subject
13 of the e-mail is al-Awlaki. He's thinking about al-Awlaki back
14 in 2012 as someone who is motivating him to do what he did.

15 And look at the attachment to this e-mail. It's that
16 book of jihad that you saw. These are some of the things that
17 were inside of it.

18 Chapter one on the command of jihad against the
19 nonbelievers and its mandate, and warnings against those who
20 don't practice jihad. Chapter two describing the virtues of
21 jihad and mujahideen. And chapter 16 these necessary rulings.

22 This is right out of the book, ladies and gentlemen.
23 It is allowed to ambush an enemy at night even if there are
24 women and children among them since that is a necessity of
25 jihad. That's exactly what this man did.

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Summation - Mr. Bove

1 After 2012 there's additional evidence that the
2 defendant continued to look up terrorist propaganda and consume
3 things, read things that would later motivate him to conduct
4 this attack.

5 These are internet searches from the timefreeze e-mail
6 account. If you start at the bottom, you can see he's looking
7 at nasheeds, religious songs relating to jihad. And he
8 continues to conduct searches relating to jihad.

9 (Continued on next page)

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Hac6rah4

Summation – Mr. Bove

1 MR. BOVE: The top two are important. February 2015
2 he is looking *Inspire* magazine. He is actually on the website
3 of Aaron Zelin, the government's expert witness. He is
4 downloading *Inspire* so that he can read it and use it in
5 connection with this attack. The search above that,
6 January 2015, the defendant of is looking up *Dabiq*, which is a
7 similar propaganda publication but this one for ISIS.

15 So I have talked a little bit about Internet searches
16 from this Timefreeze G-Mail account. These are the two
17 subscriber documents. You can see that the defendant was using
18 aliases when he set them up. On the left side, the Google
19 document it says Timefreeze. On the right side, Quagmire. How
20 do you know this is the defendant? From his wife's phone.
21 There is a contact saved in that phone named Ahmad, the
22 defendant's first name associated with that G-Mail account,
23 Timefreeze77@gmail.com.

24 Look at the attempted communications between the
25 wife's phone and this Ahmad contact on September 17th. She is

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Summation - Mr. Bove

1 trying to figure out what is going on and reaching out to him.
2 You know that this Ahmad is that Ahmad and the Timefreeze is
3 the e-mail and the iCloud that he used from this phone. There
4 are pictures of the defendant on his wife's phone as you would
5 expect and that is how you know it was his G-mail account.

6 You also know that this is his e-mail account from the
7 lap top. There are other documents on the lap top that require
8 to Quagmire's iPhone. That is the alias associated with
9 Timefreeze e-mail account. These show you, too, that these are
10 linked -- the e-mail account, the iCloud account, and the lap
11 top. The commonality there, the thing they are linked to, is
12 the defendant. Three more documents from the lap top all
13 referring to Quagmire's iPhone.

14 Is there any question that the lap top is the
15 defendant's, ladies and gentlemen? This was seized outside his
16 living room, Room G at 104 Elmora. In that same room is an
17 Amazon box from one of the bomb components that he ordered, one
18 of the purchases that he made. That lap top is absolutely
19 littered with selfies of the defendant. It is his computer,
20 ladies and gentlemen. It has selfies, it has identification
21 documents, his social security card. This is the lap top he
22 used and that helps you to understand why the Timefreeze
23 account is was created.

24 So now let's go to the actual planning of the attack.
25 As I said, this starts in May of 2016 with the surveillance

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Summation - Mr. Bove

1 video from Home Depot. I am not going to show you the video
2 now, but these are stills from it. You can see the defendant
3 in the store. He paid cash. What did he buy? Bomb parts --
4 galvanized pipe that he used at Seaside, caps for the pipe that
5 he used at Seaside, and the cap elbow that was found in
6 Elizabeth.

7 Remember, also that Agent Zimmermann told you about
8 the basement at 104 Elmora and the Home Depot bag that was
9 found down there, along with the saws and the other tools,
10 drill bits. This is one of the workshops that the defendant
11 used at 104 Elmora to build these bombs. Like I said, these
12 are the purchases and this is where they ended up at crime
13 scenes. Remember when Erin Brandt testified and I walked up to
14 her and I said, What is this SKU number on this pipe, the pipe
15 you see in top right and she read it and it matched the Home
16 Depot receipt exactly? He bought this and made it into a bomb
17 just like he bought the pipe elbow and made it into a bomb.

18 By June 5th you can see the defendant picking up
19 additional aliases. Again, this isn't because he ever planned
20 to get away with this crime. It was because he wanted to make
21 sure he didn't get arrested before he could conduct the attack.
22 So the top picture you see on the screen here is the e-mail we
23 looked at when the defendant was using his real name associated
24 with the Ahmadkakar e-mail account.

25 On June 5th, 2015, he sends a recovery e-mail. He

Hac6rah4

Summation - Mr. Bove

wants to get access to that account again. When he does that, he changes the subscriber name. He is not Ahmad Rahimi anymore. He is Aloha Hawaii. You can see that in the bottom e-mail, which he sends to himself at G-Mail account with the subject "New." So he is getting set up. Why? Because he wanted access to the *Book of Jihad* again. He wanted to start to review its teaching, teaching about Jihad, martyrdom, and the ambush principle that I described earlier. You know that this document was not just in his e-mail account. It was on the lap top as well. That is what you see on the right side the screen here. This document was taken from the e-mail account and backed up onto his iPhone and then on to the lap top. The defendant was actively reviewing the *Book of Jihad* in June and July of 2016.

Here is alias number four, Ronald Welsh. The document on the top of the screen is the subscriber information for the e-mail account that the defendant set up in the name Ronald Welsh. How do you know he did that? Look at the terms of service IP. That IP address matches what you see in the bottom right of the screen because the defendant used a wi-fi at his house at 104 Elmora Avenue to access the Internet to set up the Ronald Welsh. How else do you know he is the one who set it up? The credit card you see on the left is from the lap top. There is a picture of the credit card that he set up in Ronald Welsh's name on the lap top.

Hac6rah4

Summation - Mr. Bove

1 So he sets up the e-mail account on June 16th of 2016.
2 What else does he do? He sets up an Amazon account. You see
3 in the bottom right there the created date of the Ronald Welsh
4 Amazon account? It is the same day. Why does he have a
5 picture of that credit card on his lap top? Because he used it
6 as the purchase information for the Amazon account. The number
7 matches. The name matches.

8 June 20th was a busy day for buying bomb components
9 for the defendant. These are some of the things he used using
10 the Ronald Welsh Amazon account on June 20th. We'll talk about
11 them in a minute, but you can see he had them shipped to 587
12 Fayette Street. You see that in the middle of the screen.
13 That is the Amazon document. Then on the right left corners
14 you can see from the lap top the purchase confirmations. He
15 kind of shed the alias there and they are shipped to Kennedy
16 Ahmad at Kennedy Fried Chicken or Kennedy Fried Chicken Ahmad.
17 These are in the left and right corners.

18 What is Kennedy Fried Chicken? That is where the
19 defendant worked, ladies and gentlemen. You heard that from
20 Younus Rahimi. The defendant is buying bomb parts under the
21 alias Ronald Welsh and shipping them to his place of work by
22 June 20th, 2016 so he can start to put these together. He also
23 uses his own name that day to buy some additional things. This
24 is an eBay account where in the name of Ahmad Rahimi the
25 shipping address is also 587 Fayette. He is shipping bomb

Hac6rah4

Summation - Mr. Bove

1 components to his place of work on June 20th.

2 Now let's talk about what he bought. These are the
3 Amazon purchases. We'll go through them one by one and you'll
4 see that they link up almost exactly with the HMTD instructions
5 that were on the lap top. He was buying the tool he needed to
6 make this incredibly dangerous explosive in his house. Let's
7 start with the top one in the red box, citric acid powder. You
8 see in the bottom right citric acid is one of the components
9 and Robert Mothershead confirmed that to you yesterday.

10 Next, hydrogen peroxide. Mr. Mothershead told you
11 that peroxide for these purposes it is better when it is more
12 concentrated. That is what he bought, 35 percent food grade
13 hydrogen peroxide. You see in the picture, 30 percent hydrogen
14 peroxide, H₂O₂. He is buying what he needs to make HMTD.
15 Digital multiple function kitchen and food scale. Bottom
16 center of the screen. You need a scale to figure out what the
17 yield is of the explosives that you can making at home. Next,
18 glass beaker. Check, bought that, too. He setting up a
19 chemical lab in his bedroom.

20 What else did he buy, ladies and gentlemen. On
21 June 20th the defendant bought bomb shrapnel -- steel ball
22 bearings. He bought them from eBay. He bought them from
23 Amazon. Do you remember when I passed this around how heavy it
24 is. He bought this to kill people. This shrapnel was picked
25 up all over the street on 23rd Street. You can see that on the

Hac6rah4

Summation - Mr. Bove

1 left. On the right you can see the way it looked when it was
2 recoverd intact inside the 27thth street bomb. Glued in a
3 sheet so that the explosives would fire it all over the seat of
4 the blast.

5 A few days later, ladies and gentlemen, the defendant
6 gets the iPhone working. This is the iPhone that he later sold
7 to Younus Rahimi. He has an e-mail account where he is trying
8 to unlock the IMEI, the unique number assigned to each device.
9 This is a picture of the phone he later sold to Younus Rahimi
10 with the same IMEI.

11 July 2nd, the iPhone backup. Mr. Donaldson told you
12 about this pretty early in the trial and you can bet that the
13 defendant regrets having made this mistake. Look at the folder
14 associated with this backup field. This is not a folder that
15 is saved on a desktop of a computer. This is not your My
16 Documents folder. He didn't realize plugging in the phone
17 backed it up in this way. The defendant didn't realize that he
18 left these traces of his crime on that lap top. He didn't know
19 that he left his issues of *Inspire* magazine. He didn't know he
20 left the screen shots of jihad. He didn't realize that HMTD
21 cookbook was left on this lap top. But FBI recovered it and
22 presented it to you at this trial.

23 Throughout July and August, the defendant continued to
24 buy bomb parts -- more shrapnel, the electronic matches that
25 were found in the bomb at 27th Street, thread sealant tape for

Hac6rah4

Summation - Mr. Bove

1 the pipe bombs at Seaside, the elbow pipe in Elizabeth, and
2 some more citric acid for some more HMTD.

3 This is what I mentioned earlier when the defendant
4 sold that iPhone that he was using for some of these activities
5 to Younus Rahimi. He made that sale because he wanted to get
6 rid of the evidence. Remember, Younus Rahimi told you the
7 phone was on factory reset without a SIM card when he got it.
8 He also needed some more money to continue to finance the
9 attack. So you can see that purchase happened from the bottom
10 document between August 18th and August 19th. So this is the
11 phone with the long identifier that Mr. Donaldson described to
12 you 9C53. That is the phone the defendant had and you can see
13 when the defendant had it, it was associated again with that
14 Timefreeze e-mail account. There is a log-in on 18th and then
15 on the 19th Younus Rahimi has it with his e-mail account. So
16 that is when this sale happened.

17 What is next, ladies and gentlemen? Bomb plans.
18 These are the communications that you saw yesterday between the
19 defendant and Zobayeh Rahimi. She makes a reference to bomb
20 plans. You will remember from Mr. Shroff's cross-examination
21 of Mr. Calabrese when she made him read out what that acronym
22 means, LMFAO and several others. Do you think that the victims
23 in this crime thought that was funny? Do you think the
24 defendant's bomb plans were funny? Was that a point worth
25 making yesterday?

Hac6rah4

Summation - Mr. Bove

1 Two days before the attack, September 15th of 2016,
2 the defendant is in his backyard testing out the explosives
3 that he made. You saw this video from two angles, the
4 surveillance camera from 104 Elmora and the cell phone of
5 Zobyedh Rahimi. You can see her in the picture with the phone
6 in her hand making the video that is on the right. That
7 canister that is in the photo on the left, you know what that
8 is. You saw it from the exemplar. That is from the rock
9 tumbler, the rock tumbler that the defendant used in his
10 bedroom to make black powder for these bombs.

11 (Video played)

12 Look how happy that man is. Look at the smile on his
13 face. Two days before this attack, he knows his explosives
14 work. The jihad that he has been thinking about since 2012,
15 that he has been reading about in *Inspire* and *Dabiq*, the jihad
16 he has been planning for months is two days away and he
17 couldn't be happier.

18 So now let's talk about the attack itself. As I said,
19 we're going to start at 5:00 a.m. at the defendant's house, 104
20 Elmora Avenue. This is another time where the defendant gets
21 caught by his own surveillance camera committing part of this
22 crime. You can see in the picture on right where that
23 surveillance camera is outside the First American Fried Chicken
24 restaurant. That is on the front of his house. And on a flag
25 near the red box to the left where 104 Elmora is on the street.

Hac6rah4

Summation - Mr. Bove

1 That is from that surveillance camera. On left
2 September 17th, 4:58 a.m., the defendant is walking out of his
3 house with a white trash bag. He comes back a few minutes
4 later at 5:05 a.m. That is what is in the trash bag, ladies
5 and gentlemen, the bomb that he detonated in Seaside. How do
6 you know that? Because there was a white trash bag much like
7 it in the trash can that you see on the screen at the seat of
8 the blast. This was the defendant's first bomb load on that
9 morning. He was carrying those bombs out to his BMW.

10 This is the second trip. It was too heavy to carry
11 because the man had made so many explosives. Two bags, the
12 23rd street bomb, the 27th Street bomb, and that backpack, the
13 backpack that he carried around this entire day, these two
14 bombs that he carried around the rest of the day until he
15 planted them, there they are. The backpack has the bomb that
16 was made out of PVC that you can see the fragmentation glued or
17 taped to the top of it. Those are nuts and bolts on top of it
18 to maximize the damage. That is the one that you heard about
19 this morning that had HMTD in it that is so dangerous and so
20 volatile that even the bomb techs couldn't diffuse it. It
21 exploded in Elizabeth when they found it. Then you know what
22 these duffel bags are, the 23rd Street and 27th Street bombs.

23 I mentioned that the defendant took the BMW to go down
24 to Seaside. This is how you know that, ladies and gentlemen.
25 There were documents with his name on them in that car. Erin

Hac6rah4

Summation - Mr. Bove

1 Brandt told you about the search conducted on September 19th.
2 Here are some of the documents that were found. You also know
3 that the defendant used this BMW from Younus Rahimi, who told
4 you he saw the defendant come to and leave from work in a blue
5 BMW.

6 So this is the trip that he took that morning. He
7 goes down to Seaside Park in that car. You know that from the
8 Garden State Parkway records. You also know that from the
9 defendant's own iCloud. These are the driving instructions
10 that he saved in the iCloud. It started at Canton Street, the
11 street on the same block as his house. These are precise
12 directions to get to Seaside Park for this bombing stored in
13 the defendant's iCloud.

14 Continues on the Garden State Parkway. Here you also
15 have the license plate capture from the Raritan toll plaza.
16 The defendant is on the road to conduct this bombing by
17 5:29 a.m. He exists the Garden State Parkway at Toms River,
18 6:06. Not much traffic. It is a quick trip. You can see
19 we're just going right down the driving instructions from the
20 iCloud. The destination on those instructions was the Sawmill.
21 It is a restaurant in Seaside.

22 What happens next? The defendant walks a few blocks
23 down to C Street and plants that bomb in the trash can. That
24 red box on Ocean Avenue and D Street is the seat of this blast.
25 You heard about that from Erin Brandt and some of the other

Hac6rah4

Summation – Mr. Bove

witnesses who passed through here quickly as well.

16 Let's think about what has happened up to this point
17 on September 17th. Defendant got up early. He packed his
18 bombs in the BMW. He drove down to Seaside Park. He left that
19 bomb there knowing it would detonate because he had set the
20 alarm on the cell phone. The bomb does in fact detonate and
21 now he drives back to New Jersey. He still has the 23rd Street
22 bomb with him, the 27th Street bomb, and six more bombs in that
23 backpack. He is back home at 104 Elmora by 10:45 in the
24 morning. Ladies and gentlemen, this speaks volumes about his
25 intent for that day. The man knows by this time that his bomb

Hac6rah4

Summation - Mr. Bove

1 making scheme worked. He knows that the things he built are
2 capable of doing what he designed them to do.

3 So what does he do for the rest of the day? He gets
4 ready to conduct the attack here in the city. You saw by about
5 5:00 p.m., he was ready to leave. I am going to play this
6 video in a minute and ask you to focus on the doorway when the
7 defendant comes in and he tosses his keys. Watch how confident
8 he is. Watch how prepared he is to get on the train, come to
9 the city and detonate bombs here.

10 (Video played)

11 That is a man on a terrorist mission. What happens
12 next? Defendant takes the train from New Jersey into Penn
13 Station into Manhattan. That is significant I expect you will
14 hear when you listen to the Judge's instructions because of the
15 interstate travel. The defendant crosses the state borders
16 between New Jersey and New York.

17 Some of that train schedules are in evidence, ladies
18 and gentlemen. You can see that there was one that day
19 departing Elizabeth at 6:03 and arriving at Penn Station at
20 about 6:36. You know from the surveillance video that that is
21 when the defendant got there. Look at the crowds. When you
22 think about and evaluate the evidence relating to the third
23 category of charges, those transportation charges, the use and
24 carrying of bomb charges, I am talking about Count Six, Certain
25 and Eight, remember these pictures and remember how dangerous

Hac6rah4

Summation - Mr. Bove

1 those explosives were and think about all the risks that were
2 created by this decision to carry bombs through Penn Station at
3 this time of night on a Saturday.

4 (Video played)

5 Here are some of the video where you can see even more
6 clearly that the defendant at this point he has the 23rd Street
7 bomb in a duffel bag, the 27th street bomb, and six more in the
8 backpack.

9 (Video played)

10 Let's continue. There are the bombs. Where do you
11 see him next? Coming out of Penn Station. When I started this
12 afternoon, I talked about some of the pauses that the defendant
13 took to stay on schedule because of the way that the cell
14 phones were set up to detonate based on the alarms. This is
15 one of the pauses. Here it is on video.

16 (Video played)

17 Remember when I said he looked at New Yorkers walk by?
18 This is the defendant thinking about his victims, thinking
19 about his intentions, thinking about his plan for the rest of
20 that night. He picks up the bombs and continues.

21 One of the next places you saw him on surveillance
22 video was heading south on Eighth Avenue near 25th Street.
23 This is where he took pause number two. This one was longer.
24 It is about 20 minutes. We'll not watch the whole video. He
25 has a schedule. He knows he cannot just leave these things out

Hac6rah4

Summation - Mr. Bove

1 on the street because someone will find them. There is a
2 distinct window where you can plant it, it will be concealed
3 but it will not be found, giving him enough time to get away
4 but leaving the bomb in place so that it can go off. He is
5 trying to meet that window.

6 (Video played)

7 So he put those bombs down. If you look at the
8 timestamp in the bottom right we are at about 6:51 p.m. The
9 video continues onto 7:10. You can see the defendant here
10 standing up on the curb just to the right of that bench where
11 he set the bombs down in the video we just watched. Now he is
12 ready to go. He is ready to continue with his plan to head
13 down to 23rd Street. This is not the defendant hesitating. It
14 is not him wavering at all. This is him staying on schedule
15 and sticking to the plan. And there he goes.

16 He heads down Eighth Avenue, ladies and gentlemen, and
17 then over onto 23rd Street. This is the area of the seat of
18 the blast on 23rd Street. You heard a lot about Selis Manor at
19 135. That was Mr. LiCastro who told you about that as well as
20 some of the residence. You heard about 131 West 23rd Street,
21 the Townhouse Inn of Chelsea and the King David Gallery. You
22 know the dumpster landed on other side of the street near 144.

23 Mr. LiCastro presented you with this chart to help
24 make clear where the different surveillance cameras were
25 located in the scaffolding outside of Selis Manor. You saw

Hac6rah4

Summation - Mr. Bove

1 that the defendant was picked up on each and every one of these
2 cameras. He is walking towards the area where he planted the
3 bomb clearly both bombs in the bags and the backpack. This
4 slide is to help you get oriented between the links between
5 video from 135, the Selis Manor video and Townhouse Inn. The
6 best way to do it is stay focus on the murals and the awning in
7 the bottom right is the awning of the Townhouse Inn of Chelsea.

8 (Video played)

9 You will see the timestamp is 19:29. So it is 7:30 on
10 September 17th. The defendant walks past where he planted the
11 bombs. He has both bags with him. Remember, Mr. Ord told you
12 where he went and you can see it here. He goes to sit on the
13 steps of the church nearby. He knows at this point the cell
14 phone detonator is set for 8:30 and an hour is too long to
15 leave that thing out in the street. Someone will detect it and
16 he is worried someone will find it and prevent it from going
17 off.

18 So look at timestamp here. 7:30 and he sits there.
19 He watches people walk by on 23rd Street for about 20 minutes
20 with both of those bombs next to him. That is where he is
21 sitting, ladies and gentlemen, right next door on the steps of
22 that church. You can see from the video here where he picks up
23 and it is 20 minute later, 19:53, 7:53. If you watch that
24 left-hand corner, you will see the defendant stand up and wheel
25 the bombs back. He is going to walk past the camera and then

Hac6rah4

Summation - Mr. Bove

1 you will see him head off the sidewalk. He is going out into
2 the street to plant the bomb near those dumpsters that
3 Mr. LiCastro told you about because that was the place given
4 the scaffolding there and all the activity on the street where
5 he thought correctly that no one would find the bomb before it
6 went off.

7 (Video played)

8 Here he heads off the sidewalk. You know what he did
9 after that. You know that he planted that bomb near the
10 dumpster because the next thing that comes up is the video with
11 him holding just one bag. He has planted the first bomb at
12 this point and he is walking away calmly from the bombsight
13 down 23rd Street. He is has given himself enough time having
14 left at 8:00 and the alarm is set for 8:30 to get himself away
15 from it and is he also put in a position to cause as much death
16 and devastation as possible.

17 Here is the camera shots of him walking back past
18 Selis Manor. Clearly just one bag at this point. You know
19 what happened on 23rd Street at 8:30.

20 (Video played)

21 That video just went black because the bomb blew the
22 camera up. This is the video from the Townhouse Inn that I
23 talked about earlier. There are no words for this.

24 (Video played)

25 The cameras at Selis Manor picked up people on video

Hac6rah4

Summation - Mr. Bove

1 in complete panic and shock from the bomb that went off just
2 yards away. That is Cort Cheek. Remember how he described
3 this? Look at the people sprint by. These women cannot even
4 tell which direction they have been attacked from.

5 So those were all videos from the north side of the
6 street right near where the defendant planted the bomb. You
7 saw there was extensive damage on the south side of the street
8 as well. These are some of the videos from Orange Theory
9 Fitness that Adam Krell talked about.

10 (Video played)

11 You see Tsitsi Merritt's car on the left? You heard
12 about this this morning. You window was blown out of the car
13 with a child in the back.

14 One of the things you will be asked to consider when
15 you deliberate is whether or not this bomb damaged property.
16 Do you think these pictures speak for themselves? Glass blown
17 onto the streets. You remember what Mr. Ord told you about the
18 bomb ripping into the basement of 131 West 23rd taking some of
19 the equipment down there and ripping it right off its concrete
20 moorings. These are some of the vehicles that Special Agent
21 McReynolds told you about with the windows blown out, shrapnel
22 damage. Look at the photo in the top right in the church with
23 the window blown out.

24 So while all that was happening on 23rd Street, as
25 that bomb was ripping through the street, the defendant was

Hac6rah4

Summation - Mr. Bove

1 walking calmly to 27th and planting that bomb. This is the
2 route he took up Seventh Avenue and over onto 27th Street.

3 (Video played)

4 Here is one of the surveillance cameras showing that.
5 You can see he has the one bomb at this point in the wheelie
6 bag and the backpack with the bombs that were found in
7 Elizabeth.

8 There were cameras on 27 Street that picked up the
9 defendant planting this bomb much in the same way that he is
10 picked up planting the 23rd Street bomb. So here is a series
11 of stills from those cameras showing him walking down.

12 (Video played)

13 This is video from the scaffolding and you can see in
14 the top left corner there is the mailbox where the defendant
15 eventually planted the bomb. You can watch as his feet pause
16 there as he thinks about is this the best place. You will see
17 in the next video he pivots his hips because he is looking
18 across the street at the hotel and the restaurant and that is
19 how he decided, I submit to you, that this was the right place
20 to do this.

21 (Video played)

22 The Mailbox is right under the word "street" at the
23 top. That is the defendant with the bag. There he is looking
24 across the street, looking at the people at that restaurant and
25 he calmly walks away. He walked away intending that that bomb

Hac6rah4

Summation - Mr. Bove

1 would go off in a half hour leaving himself about the same
2 window he left himself at 23rd Street. He plans and intended
3 for this bomb to detonate in exactly the same way the 23rd
4 street one did.

5 Remember the forensic evidence found on this bomb.
6 Fingerprints not just on the pressure cooker but actually
7 inside the cell phone. DNA on the cell phone. Mr. McFarlane
8 told you there was an alarm set on the phone, set to vibrate.
9 You know what that would have done with this phone the way it
10 was modified. It would have sent power on to the wires that
11 the defendant soldered on it and power to the Christmas tree
12 lightbulb that the defendant had fixed into the box and it
13 would have detonated the black powder and the HMTD that the
14 defendant made and planted in that bomb.

15 (Video played)

16 Here is another shot of the defendant now leaving the
17 seen without the bomb. The same cameras pick him up walking
18 away giving himself a safe distance from the bomb he just
19 planted.

20 (Video played)

21 This is the video that you saw of the two men who walk
22 by and notice this. They open up the bag. They take the bomb
23 out. I think you will recall vividly from this morning what
24 Special Agent DeFusco thought about the wisdom of touching this
25 device. He said it would be like slapping a cobra. This is

Hac6rah4

Summation - Mr. Bove

1 one the three times where it worked out okay. This is one of
2 the absolute miracles in evidence at this trial that this bomb
3 packed with HMTD did not go off as these men jostled it.

4 Because what they did is they handled the bomb in ways that the
5 defendant hadn't up until this point. They moved it around and
6 shook it by the pressure cooker body. I submit to you in doing
7 that, they dislodged one of the wires, one of the parts of the
8 fusing system.

9 See the way he is handling it now? They like the bag
10 and they took the bag and walked away with it. They left the
11 bomb out in the open on the street. What did that do? It
12 allowed Ms. Schreibman to see it and it allowed her to identify
13 it and call 911 so that the NYPD could come and diffuse it.

14 Think about the timing. The alarm was set in that
15 phone to detonate for 9:00 p.m. These men did this at about 10
16 to. This is what prevented this bomb from going off. Nothing
17 that the defendant did. The defendant had every intention of
18 this one going off like the one in Seaside and the one in 23rd
19 Street.

20 Think about what he was doing around this time. Now
21 it is 9:06. He is up on Seventh Avenue, 32nd and 33rd Street.
22 It is about six minutes after the alarm was supposed to go off.
23 He is probably wondering what is going on. Why hasn't this
24 think gone off yet.

25 Remember some of the cross-examination that happened

Hac6rah4

Summation - Mr. Bove

1 of the law enforcement officers who collected evidence at 27th
2 Street, Special Agent Leung and Special Agent Jill Enyert?
3 They were asked questions about, was it really still dangerous
4 after this bomb had been diffused? After the bomb had been
5 removed from 27th Street, was there any danger? Was there any
6 rush? Are you sure you didn't have time to take some more
7 notes about exactly how this happened? This picture captures
8 exactly why they were right, why their procedures were entirely
9 appropriate.

10 The defendant for the rest of September 17th, the rest
11 of the night, walked around with a backpack full of six more
12 bonds. As the 27th Street crime scene was being processed, he
13 was still out there with more explosives. You heard a lot
14 about what happened at 27th Street. Detective Hallik responded
15 to that scene. He used a robot to remove the cell phone
16 detonator from the device. That cell phone you heard from
17 Special Agent Leung and Enyert was collected, was taken back to
18 the crime scene setup at 23rd Street so that it could be
19 processed. The phone was on when it was picked up. It was set
20 to go off. It was then recorded in evidence at the crime scene
21 and rushed down to Quantico so that it could be evaluated.

22 The bomb itself, the pressure cooker, was put in a
23 total containment vessel, brought safely to Rodman's Neck so
24 that the bomb techs could diffuse it. They call it a
25 render-safe procedure. They popped the lid off the pressure

Hac6rah4

Summation - Mr. Bove

1 cooker. The real victory of that operation, what it really
2 allowed was the evidence to be preserved. They didn't just
3 take it out into the desert and detonate the bomb. They took
4 it apart carefully so that that evidence could be preserved and
5 so that you can see the proof of exactly what the defendant
6 build and know from that proof, know from the contents of that
7 pressure cooker what his intentions were.

8 Now, let's talk about what happens next. The 23rd
9 Street bomb is detonated. That crime scene is being processed.
10 The 27th Street bomb has been collected and it is in the
11 process of being diffused. The defendant is still at large.
12 Next time that he shows up on surveillance video is at Penn
13 Station the following day. It is about 2:50 on September 18th.
14 He still wearing the backpack. Again, the backpack that you
15 know has six additional bombs. This is the second time that
16 the defendant brought a load of bombs into Penn Station during
17 this case.

18 (Video played)

19 He catches a train. Here he is at the Newark Penn
20 Station. There is a transfer he picks up, 3:25. Going to
21 Elizabeth at 3:35. You can see on the video still with the
22 backpack. The Elizabeth Train Station to be clear is within
23 blocks of 104 Elmora Avenue. This is naturally the stop the
24 defendant would take and this is where the defendant planted
25 the rest of those bombs.

Hac6rah4

Summation - Mr. Bove

1 Now, Ladies and gentlemen, the fusing systems on these
2 bombs were different. They weren't cell phone. They were the
3 green hobby fuse. The testimony was you would have to light it
4 in order to make them detonate. Remember, that they also
5 contained HMTD. So this is relevant for two reasons. The
6 first is that HMTD is to volatile, as Special Agent DeFusco
7 told you already, that it could have gone off at any point by
8 shaking it around. So leaving these types of bombs with that
9 type of explosive at a train station -- remember, it was found
10 on the 18th on a Sunday into early on the 19th. The bombs
11 would have been right there on a crowded rush hour on that
12 Monday. So it speaks about the defendant's intent that he left
13 an explosive mixture this volatile right near a train station.

14 It also speaks about the 27th Street device. There
15 was HMTD in both of those and you know what happened at the
16 Elizabeth Train Station. The bomb technicians at that crime
17 scene were not able to render safe these devices. The one that
18 is in the red box, the one made out of PVC pipe, when they
19 tried to collect it and tried to take the top off so they could
20 empty out the explosives, it blew up. These were devices that
21 were capable of exploding, both the 27th Street device and
22 these as well. That is how you know that the defendant
23 intended for the 27th Street device to explode and do great
24 damage because it had HMTD in it. That substance by itself
25 just by jostling it can go off at any time.

Hac6rah4

Summation - Mr. Bove

1 If you needed anymore proof that these were the
2 defendant's bombs at the Elizabeth Train Station, Dee J. Fife
3 provided that extensive fingerprints were found all over the
4 bomb, the tape from inside the bombs, and DNA was found on one
5 of the lighters in the backpack.

6 So now there are a few active crime scenes, the
7 bombing in Seaside Park, the bombing on 23rd Street, an
8 attempted bombing where a bomb was found at 27th Street, and
9 there are these additional bombs at Elizabeth Train Station.
10 Then you know that on the morning of September 19th, 2016, the
11 defendant was arrested and his house was searched shortly
12 thereafter. This is a stipulation in evidence that the
13 defendant was arrested that morning on the 19th. You know that
14 that is when the notebook was collected that contained the
15 letter that we talked about in the beginning.

16 How do you know that the defendant wrote that letter?
17 First of all, he was carrying it around with him after he
18 conducted this attack and it describes the attack that he
19 conducted. Second, think about the way that it is written. It
20 is written in the first person. He repeatedly refers to
21 himself as "I" as he describes his plan.

22 Let's talk about the searches because there was
23 important evidence found after the defendant was arrested at
24 his house at 104 Elmora. We've already talked a little bit
25 about this living room area, which the FBI called Room G during

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Summation - Mr. Bove

1 the search. One of the things they found there was the hard
2 drive that contained the surveillance video that showed the
3 defendant testing the bombs on the 15th, showed the defendant
4 leaving to go to Seaside Park on the morning of the 17th, and
5 showed him coming back and departing again later that day.
6 They also found this Amazon box in Room G in that living room
7 but also outside the defendant's bedroom.

8 Let's talk about that bedroom.

9 THE COURT: Mr. Bove, this might be a good time to
10 take five minutes.

11 (Jury excused)

12 (In open court; jury not present)

13 THE COURT: Please be seated.

14 MS. SHROFF: Your Honor, can we step out?

15 THE COURT: Sure.

16 (Recess)

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Summation - Mr. Bove

1 (Jury present)

2 THE COURT: Mr. Bove, go ahead.

3 MR. BOVE: May I continue, Judge?

4 THE COURT: Sure.

5 MR. BOVE: Thank you.

6 Now before the break we had started to talk about the
7 search of the defendant's house. The first one took place on
8 the same day he was arrested, September 19. So less than 48
9 hours after this bombing occurred the defendant was in custody
10 and the FBI was at his house looking for additional evidence.

11 So we talked about room G and the surveillance video,
12 the hard drive that was found there. And the Amazon box, the
13 type of box that would have been sent for the defendant's
14 Ronald Welsh purchases, the shrapnel. We started as to talk
15 about the bedroom, the bedroom that was connected to that
16 living room.

17 If you look at the top right photo. There is a cooler
18 in that closet, ladies and gentlemen, packed with additional
19 identification documents from the defendant. This was
20 defendant's bedroom and it was also his explosives laboratory.

21 Let's start with the HMTD evidence. You heard that
22 there was a swab taken of the plywood that you see in the photo
23 on the left. And Mr. Mothershead told you that there was
24 residue from HMTD on that plywood.

25 You also heard -- now I'm talking about the photo in

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Summation - Mr. Bove

1 the middle -- that there was a vacuum sample taken of the
2 carpet near that electrical out let. Again, Mr. Mothershead
3 told you HMTD residue on the carpet. The defendant used this
4 bedroom as one of the places, one, that he made these bombs.

5 What else was in that room? The rock tumbler. You've
6 seen the rock tumbler that was seized from that closet. You've
7 seen an exemplar of a rock tumbler. There was a lot of
8 testimony about this rock tumbler.

9 What does it mean, ladies and gentlemen? This is what
10 the defendant used to make the black powder. You heard from
11 Mr. Mothershead that the black powder that was found in the
12 27th Street device was more fine than commercial grade black
13 powder. Commercial grade black powder is coarse and it has a
14 coating. This did not. It's because the defendant used this
15 tool to mix the components together. There was black powder
16 found on the red body of the pressure cooker, and there was
17 also the defendant's fingerprint found there as well.

18 There were other bomb-making tools, bomb-making
19 equipment found in this room: The caulk gun that the defendant
20 used to seal the top on the pressure cooker of the 27th
21 Street bomb. Remember Detective Hallik told you about how much
22 trouble they had at Rodman's Neck, at the bomb range, trying to
23 figure out how to pop that lid off to get the contents of the
24 bomb out safely. And one of the reasons that it was so
25 difficult, one of the reasons this bomb was so dangerous was

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Summation - Mr. Bove

1 that the defendant sealed the pressure cookers so that nobody
2 could get back into it once he had placed the explosives inside
3 of it.

4 You can also see the duct tape, the duct tape that you
5 saw on just about every bomb the defendant made.

6 I said the bedroom was just one of the places where
7 the defendant made bombs inside his house. There was also a
8 workshop in the basement. This is the room the FBI labeled L
9 during the search. And one of the first things that Agent
10 Zimmerman told you about room L was that there was a big piece
11 of PVC pipe in the trashcan. You can see that in this photo.

12 Where else did you see PVC pipe in the evidence in
13 this case? There were fragments of it, and fragments only,
14 from the bomb that went off that was found in Elizabeth. This
15 is the PVC pipe that was used to make that bomb that detonated
16 when the bomb techs tried to make it safe.

17 What else was in room L? A whole lot of tools. Saws.
18 Black electrical tape like the tape you saw on some of the
19 bombs. Drill bits. Those drill bits were necessary to drill
20 into the pipes. Why? So that the Christmas tree lights and
21 the wires could be slotted in so that those bombs would
22 detonate. That's the way the Seaside bomb worked. And you
23 could see that the holes in the pipe, the elbow pipe that was
24 found at Elizabeth so that the fuse, the green fuse could be
25 inserted.

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Summation - Mr. Bove

1 And then remember I asked the question about the white
2 bucket that you see just on the bottom of the screen in that
3 picture? Remember what was inside there? Screws. Nails.
4 Fragmentation. This was a place where the defendant stored
5 shrapnel for the bombs that he made.

6 Also in this basement area was a notebook, a binder
7 that you saw in evidence, Government Exhibit 533. This was a
8 notebook with the defendant's notes from a class that he took
9 about electronics. This is how you know that the defendant had
10 the skill, the expertise to make the fusing systems that he
11 made. These were not simple things that he did. He soldered
12 wires. He removed the vibrate feature out of the phone. He
13 had the experience to do that, and you know it from this binder
14 found in the same room where the tools were that he used to
15 make the bombs.

16 And you know that this was a room he was using from
17 this suitcase. This is another place where the defendant left
18 evidence of his identification documents, other materials
19 relating to him that prove that these are places that he was
20 using, that he had access to, and that he used in connection
21 with this crime.

22 This is all from that basement, ladies and gentlemen,
23 the PVC pipe, the tools, the frag bucket, the binder with the
24 electronics instructions, and these documents with the
25 defendant's name on it.

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Summation - Mr. Bove

1 You also heard a lot of testimony about the backyard.
2 We've seen a little bit of the backyard already from
3 September 15 of 2016 when the defendant tested the black powder
4 that he was making in his bedroom out there.

5 These are the canisters on the right side from the
6 rock tumbler. Remember the testimony about the rock tumbler
7 that was seized out of the closet and it was missing those two
8 pieces? That's because they were burned and damaged from
9 explosives in the backyard. This is the way they were found
10 back there, along with burnt electronics, like cellphones that
11 the defendant was trying to get ride of because he was
12 concerned that he was going to be caught before he could
13 conduct this attack.

14 Look at the bottom of the screen. Look at the siding
15 on the house. The defendant's been testing explosives back
16 there to such an extent that the siding was getting melted on
17 the house at this point.

18 Now, I want to talk in more detail about how these
19 bombs were made, the different pieces that put them together.
20 The reason that I want to talk about this is it shows that they
21 were sophisticated and that the defendant understood that they
22 would kill people if they detonated. The defendant put them
23 together to do just that, intending to commit all of the crimes
24 that he's charged with.

25 Judge Berman is going to instruct you about the

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Summation - Mr. Bove

1 different definitions that you need to be considering, things
2 like explosives, weapons of mass destruction, destructive
3 devices. Those are definitions that we'll talk about in a bit.

4 The different components of these bombs, although
5 they're somewhat technical, are not necessarily legal
6 requirements that you've got to consider. They just help to
7 show you that the defendant was himself a sophisticated
8 bombmaker.

9 So you heard about the different components that go
10 into an improvised explosive device, which is just a fancy term
11 for a homemade bomb. You heard this from Special Agent
12 DeFusco. These are the things that we saw in this case. An
13 outer container, an inner container, a fusing system, some kind
14 of explosive, and fragmentation.

15 So let's talk about what each of those pieces are and
16 how the defendant used them.

17 The evidence of that starts with an article from
18 *Inspire* magazine that was on the defendant's laptop, Make a
19 Bomb in the Kitchen of your Mom.

20 And this article was published by AQAP to help people
21 like the defendant learn how to make bombs with the ingredients
22 that you would find in your house, so that you could do, as the
23 defendant said, "an attack on the kuffar in their backyard," in
24 the United States, without having to go any place for any
25 specialized training, without needing access to a lab or any

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Summation - Mr. Bove

1 kind of special chemicals. This article provided the
2 instructions, and the defendant followed almost all of them.

3 Let's start with the outer container. An outer
4 container is basically just a concealment bag, a way to hide
5 the bomb so that it doesn't get detected after it's planted.
6 Where did the defendant get the idea from this? From the
7 article itself. This is not an excerpt from the article, and
8 there's a red box around one of the pictures from it. The
9 article itself recommends placing the bomb in a bag so it can
10 be left on the street and people will just think it's a normal
11 item. And you know that that's exactly what the defendant did
12 at 23rd Street and at 27th Street. That's why it is so
13 critical to the safety of the people who were on 27th Street
14 that those two men picked the bag up and took the bomb out.
15 That is the way that that bomb got discovered. So here is a
16 picture on the left, the defendant with the two outer
17 containers, the concealment bags.

18 These are two pictures of some of the evidence that
19 was collected from 23rd Street. This evidence came in
20 through Special Agent Macdonald. And you were probably
21 wondering at the time, given everything else that was found on
22 23rd Street -- cellphone fragments, Tannerite labels, ball
23 bearings -- why are we talking about some pieces of cloth?
24 That's because these are the pieces of the bag that the
25 defendant used to hide the bomb. Those were collected.

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Summation - Mr. Bove

1 Remember, it includes a zipper. These were collected because
2 they are components of the outer container of this bomb.

3 What's an inner container? In this case the defendant
4 followed the advice of *Inspire* magazine. He followed this
5 article and he used pressure cookers. You can see in the red
6 box on the top the article recommends: The pressurized cooker
7 is the most effect method. Method for what? A lone wolf
8 terrorist attack to kill Americans.

9 There's a picture of a pressure cooker in the article,
10 and you know that the defendant used pressure cookers in both
11 bombs. There were pressure cooker valves found on 23rd
12 Street and 27th Street you have the entire pressure cooker
13 body before you.

14 A fusing system is kind of like a fancy word for a
15 detonator, the way that the defendant set up the bomb so that
16 it would go off. In this case, at 23rd Street and 27th
17 Street, as well as at Seaside Park, the defendant used
18 cellphones with alarms.

19 How did this work? Well, first you need a power
20 source, something to provide enough electricity to light that
21 Christmas tree lightbulb. The cellphone battery does that.
22 And Mr. Mcfarlane testified that the batteries at issue in this
23 case were sufficient to provide enough electricity to light
24 those Christmas tree lightbulbs. That was the point of that
25 testimony; that he did the test to make sure that these two

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Summation - Mr. Bove

1 types of phones, the LG440 that was used at Seaside and 23rd
2 Street and the Samsung that was used at 27th Street, that
3 they could, would, in 27th -- in the case of 23rd Street
4 did -- do that job.

5 How? An alarm goes off on the phone and it sends some
6 current out to the place where the vibrate motor is supposed to
7 be. The defendant removed those motors so that the current
8 would go to the wires that he soldered onto the circuit board.

9 What happens next with that current? It goes to the
10 Christmas tree lightbulbs that he also connected. What happens
11 then? The Christmas tree lightbulb lights up, but the
12 lightbulb itself is broken, so the filament is exposed to the
13 explosive and that's when the bomb detonates. That's how the
14 23rd Street bomb went off and that's how the 27th Street
15 bomb was designed to go off.

16 These are the pieces of evidence that show you the
17 different fusing systems. First from 23rd Street there were
18 only fragments because that bomb went off of the cellphone.
19 You saw the back of the phone with the IMEI label. The next
20 picture down is the cover of the phone. And then, finally, the
21 third picture on the bottom is from the cellphone battery, the
22 power source. And the picture on the right you know that that
23 piece of evidence was recovered in full from 27th Street in
24 light of the render-safe procedure that removed that phone
25 before the bomb was further detonated -- excuse me, further

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Summation - Mr. Bove

1 rendered safe.

2 Christmas tree lightbulbs. This is right out of,
3 again, the *Inspire* play book. This is the advice they gave,
4 and this is the evidence that was found. Christmas tree
5 lightbulbs were in the 27th Street bomb. Christmas tree
6 lightbulbs were found at Seaside. The defendant is using the
7 same methodology, the same bomb design three times, Seaside,
8 23rd Street, 27th Street. We don't have the lightbulb from
9 23rd Street likely because it was destroyed in the blast that
10 the defendant caused.

11 Let's talk a little bit about the evidence relating to
12 these phones. So, as I said, the phone that was recovered in
13 Seaside, the same make and model of the phone that the
14 defendant used at 23rd Street, an LG 440 phone. And there's
15 a record in evidence that shows you that those two phones were
16 sent to the same Family Dollar store in Perth Amboy,
17 New Jersey. And look at the screen about where that Family
18 Dollar was. Blocks away from where the defendant worked and
19 blocks away from this 12 Harbor Terrace address where the
20 defendant used to have an apartment. This is where the
21 defendant bought two of the phones that he used to detonate
22 these bombs.

23 This is some of the evidence relating to the 27th
24 Street phone. So because it was recovered intact, we were able
25 to determine what the IMEI, the identification number, was for

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Summation - Mr. Bove

1 the phone. And this phone, too, was linked to Perth Amboy.

2 This is that 12 Harbor Terrace address that I was just talking
3 about. You can see it in the bottom right of the screen.

4 Now this record indicates that the billing party is
5 Mohammed Rahimi, somebody other than the defendant. But look
6 at when this phone was active. See the dates in the red box,
7 2010, 2013, 2011. This is a phone that was being used actively
8 years ago. Then it was sitting in one of these houses, 12
9 Harbor Terrace, maybe 104 Elmora. The defendant had access to
10 it and he decided to use this in the 27th Street bomb.

11 This is some of the evidence that you saw from that
12 phone itself. Mr. Mcfarlane told you there was an alarm record
13 in the phone set for 9 p.m., set to detonate the bomb on 27th
14 Street. That's how you know that he intended to cause an
15 explosion, to cause death, and to cause property damage when he
16 planted that bomb.

17 Now there was testimony about not being able to tell
18 what the specific time on the phone was set for because the
19 battery had been removed before it was brought down to
20 Quantico. But that doesn't affect the time of the record, the
21 alarm record that was set. So whatever the time was before or
22 after that battery removed, the evidence that is most
23 pertinent, I submit, is that that thing had an alarm on it set
24 to go off at 9 p.m.

25 You also saw and heard from Dee J. Fife and Heather

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Summation - Mr. Bove

1 LaSalle that the defendant's fingerprints and DNA were on this
2 phone. The fingerprints, this is the testimony where the
3 fingerprints are up inside the screen. This is more evidence
4 that the defendant built these bombs himself. He's a
5 sophisticated bombmaker who understands how to put these things
6 together and he understands what they will do. He knew what
7 would happen when that 23rd Street bomb went off and he fully
8 expected the same thing to happen when he planted that bomb at
9 27th Street.

10 Let's talk about the explosives the defendant used.
11 Starting with the guidance from Make a Bomb in the Kitchen of
12 your Mom, the article is clear you don't have to use one
13 substance, and in this case the defendant didn't. One of the
14 reasons that he didn't was that the pressure cooker required a
15 lot of explosives. And you see this is a concern raised in the
16 article. In order to fill, for example, a pressurized cooker,
17 you may want to use gun powder, powder from fireworks, but it
18 might take more than one substance. And that's what we saw
19 here.

20 On 23rd Street the defendant used ammonium nitrate,
21 a high explosive. And on 27th Street, as we've been talking
22 about, a mix of the black powder that he made at his house and
23 also the HMTD that he made in that bedroom.

24 This is some of the evidence that helps to show you
25 that the defendant used ammonium nitrate in the 23rd Street

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Summation - Mr. Bove

1 bomb. They are the fragments of the Tannerite label that were
2 recovered on the street. And, remember, not just recovered
3 near the scene of the blast, blown all the way across the
4 street to the south side of the street a few yards down from
5 where the dumpster landed.

6 How do you know that the defendant was thinking about
7 making ammonium nitrate based explosives? From the laptop.
8 Here are two of the images from the laptop. He's looking at
9 detonators anonymous. There's an 84 percent ammonium nitrate
10 explosive on the left photo, and then on the right there's
11 another picture from explosives.net with an explosive that
12 involves the chemicals ammonium nitrate and diesel.

13 So this is what the defendant planned for the 23rd
14 Street bomb and this is why that bomb caused as much damage as
15 it did. You heard the testimony from Mr. Mothershead and from
16 Special Agent DeFusco about how powerful ammonium nitrate is as
17 an explosive and you saw exactly the extent of the damage that
18 it did.

19 This is another document that shows you the defendant
20 was thinking about using ammonium nitrate as an explosive at
21 23rd Street. This one is from his iCloud. And in the red
22 box you can see more instructions about ammonium nitrate based
23 explosives.

24 Now let's talk a little bit more about the black
25 powder and the HMTD. We've already talked about the rock

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Summation - Mr. Bove

1 tumbler. The defendant used that to mix up the black powder.

2 There was a black powder residue on the rock tumbler as well as
3 his fingerprints.

4 Yesterday you saw these pictures from the defendant's
5 laptop. Step-by-step instructions for making HMTD.

6 I showed you earlier the way that the purchases the
7 defendant made and the Ronald Welsh Amazon account line up
8 exactly with the tools that he needed to make the HMTD that was
9 found in this explosive.

10 In case the pictures weren't clear enough
11 instructions, the defendant also wrote them down in the same
12 note from his iCloud account. So this is text above the
13 ammonium nitrate instructions. These are the ingredients for
14 making HMTD.

15 So you can tell from this document the defendant is
16 thinking about these things together. It's one single attack.
17 These are the explosives he's thinking about using. These are
18 the explosives that he did, in fact, use. Ammonium nitrate at
19 23rd Street. HMTD and black powder at 27th Street.

20 This is a photo we looked at when we resumed from the
21 break, the different evidence of the residues that were found
22 in his bedroom, in his laboratory and on the rock tumbler.

23 Now let's talk a little bit about the fragmentation.

24 Inspire is clear about this. This is also from the
25 article. You need to also include shrapnel. The best shrapnel

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Summation - Mr. Bove

1 are the spherical ones. As you can see in the figures, you
2 need to glue them to the surface of your canister.

3 The defendant followed this instruction exactly.
4 That's exactly what he did. You knew that from all the
5 fragmentation, the shrapnel, the ball bearings that were picked
6 up on 23rd Street. That was additional testimony from
7 Special Agent Macdonald talking about how these things were
8 found almost all the way to Sixth Avenue, blown all over the
9 street.

10 And then you were able to see from the 27th Street
11 device exactly what it looks like when the defendant glued the
12 ball bearings together, put them in a sheet, and packed them in
13 the device because that sheet with the adhesive was recovered
14 intact out of the bomb when it was defused at Rodman's Neck.

15 So that was the evidence about the specific details of
16 the explosives, the evidence that shows you that they were
17 designed in a sophisticated way. They were designed based on
18 the playbook, the blueprint provided by terrorists and so they
19 reflect that the defendant built them in order to conduct a
20 terrorist attack designed to kill people here in the U.S. and
21 to damage property.

22 Now let's talk in a little bit more detail about the
23 charges.

24 Now, as I said in the beginning, Judge Berman is going
25 to instruct you on the law. Whatever Judge Berman says

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Summation - Mr. Bove

1 controls. I'm going to talk a little bit about each charge and
2 some of the things that I believe that we are required to prove
3 and the evidence that we have provided to you to establish
4 those elements.

5 Let's start with the charges that relate to the 23rd
6 Street bombing.

7 So Count One charges the defendant with using a weapon
8 of mass destruction at 23rd Street. And these are summaries
9 of the elements that I expect Judge Berman will instruct you
10 that the government's required to establish.

11 And the first is that the defendant knowingly used a
12 weapon of mass destruction. And listen to Judge Berman when he
13 provides you with the definition of weapon of mass destruction.
14 It's straightforward. It sounds something like this. Any
15 explosive bomb or similar device will suffice for purposes of
16 that element. And you know that the defendant employed a
17 weapon of mass destruction at 23rd Street because the bomb,
18 in fact, went off.

19 There's really no question that the weapon of mass
20 destruction was deployed against people and property in the
21 U.S. It went off on 23rd Street and you saw the damage that
22 it did.

23 The third thing you'll be required to consider is
24 whether the defendant had lawful authority to use a weapon of
25 mass destruction. And that's why we talk about these bombs in

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Summation - Mr. Bove

1 terms of improvised explosive devices, homemade bombs. He was
2 absolutely not authorized to use any of these materials in the
3 way that he did.

4 Finally, the last element requires proof of use of it
5 in interstate commerce. And I expect Judge Berman will
6 instruct you that this includes transportation, transportation
7 like the train that the defendant took from New Jersey into
8 New York.

9 Count Three also relates to the 23rd Street bombing.
10 This one charges bombing a place of public use. And these are
11 some of the elements that you'll be asked to consider. Whether
12 the defendant knowingly placed or detonated an explosive in a
13 place of public use. And, again, here I expect Judge Berman
14 will instruct you that the definition of explosive is broad and
15 it applies to things like bombs and chemicals that may cause
16 explosions. And these are elements that are easily met at
17 23rd Street because of the ammonium nitrate residue that was
18 found there, because you saw the Tannerite label which
19 indicates that ammonium nitrate was used, and you saw the
20 evidence from the laptop that the defendant was looking up how
21 to make ammonium nitrate explosives.

22 Place of public use I expect Judge Berman will
23 instruct you involves any place that's accessible to the public
24 such as a business. So when you consider that element think
25 about the Townhouse Inn of Chelsea. Think about Orange Theory

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Summation - Mr. Bove

1 Fitness. Think about the businesses on 23rd Street that were
2 impacted by the bomb that detonated.

3 Next you'll be asked to consider whether the defendant
4 intended to cause death or serious bodily injury or extensive
5 destruction resulting in major economic loss. The defendant
6 did, in fact, cause extensive destruction resulting in major
7 economic loss. And the way that he put this bomb together with
8 the fragmentation that it included shows you that he intended
9 to cause much more than that. He intended to kill and he
10 intended to cause serious bodily injuries, injuries like the
11 one you heard about from Helena Ayeh. Remember what she told
12 you about what happened to her eye. She paused and asked
13 questions of people around her about whether she still had an
14 eye because of the piece of shrapnel from the defendant's bomb
15 that struck her in the face, struck her in the face just yards
16 away from where the dumpster landed right outside her doorstep.

17 Next you'll be asked to consider for this charge
18 whether the offense took place in the United States. That one
19 is plainly met.

20 And finally the last element I expect Judge Berman
21 will instruct you that you need to think about whether this was
22 an attempt by the defendant to compel the U.S. Government to
23 act or the victim is a foreign national.

24 So on the first point, was this an attempt by the
25 defendant to compel the U.S. Government to act. When you

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Summation - Mr. Bove

1 consider whether that's the case, think about the defendant's
2 letter. The defendant wrote a letter in this case on the first
3 page directed to the U.S. Government. That is how you know
4 that he intended through this attack to cause the U.S. to
5 change the way that it was operating.

6 You also know that from his terrorist propaganda.
7 Because that is all about what Anwar al-Awlaki, al-Adnani and
8 bin Laden were talking about, changing U.S. policy, compelling
9 the U.S. Government to change the way it's acting.

10 The defendant was driven by these terrorist motives.
11 You saw that from the evidence on his laptop, *Inspire* magazine,
12 and you saw that from the letter. And that's why this element
13 is satisfied.

14 In the alternative, we can establish this element by
15 showing that one of the victims was a foreign national. You
16 heard from Ms. Merritt this morning. Not a citizen of the
17 United States. So this element is easily satisfied.

18 Count Four, ladies and gentlemen, also in this group
19 relating to the 23rd Street bomb. This is a charge that
20 relates to destruction of property by explosive. And the first
21 thing that you'll be asked to consider is whether the defendant
22 used an explosive to damage or destroy property.

23 The bomb went off, ladies and gentlemen. This element
24 is satisfied.

25 Was property used in interstate or foreign commerce.

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Summation - Mr. Bove

1 Again, think about the businesses on 23rd Street that were
2 impacted. Think about what Eric Ward told you about the
3 business that was going on at the Townhouse Inn of Chelsea.
4 That was the week of the United Nations conference. The Inn
5 was packed. And I believe he said 11 of the 13 rooms were
6 booked with international guests. Those are people who you can
7 consider as victims in the previous count because they were --
8 the Inn had to shutdown because of the attack. You can
9 consider them here and the commerce that they brought when
10 you're thinking about whether this element is satisfied.

11 Next, you'll be asked if the defendant acted
12 maliciously. Ladies and gentlemen, the defendant placed a bomb
13 on 23rd Street packed with shrapnel. You saw what it did.
14 You saw the impact that it had on the victims. When you hear
15 Judge Berman's instruction about what maliciously means you'll
16 have little doubt that this standard is met.

17 Was there personal injury? Think about Ms. Ayeh.
18 Think about other witnesses who told you that they still have
19 shrapnel in their bodies, like Ms. Wilson. There were absolute
20 injuries sustained as a result of the attack on 23rd Street.

21 Now let's talk about the 27th Street charges. There
22 are two of these. Count Two charges the defendant with using
23 or attempting to use a weapon of mass destruction at 27th
24 Street. So one of the things that you'll be asked to consider
25 is whether the pressure cooker that was recovered there is a

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1 weapon of mass destruction. And you know that the answer to
2 that is yes because it was taken apart and you were able to see
3 it in different pieces, the explosives that were placed in it,
4 the detonator that the defendant set to make it go off, the
5 frag, the shrapnel, the ball bearings that he packed in there
6 designed to kill people. This was clearly a weapon of mass
7 destruction. And the question will be whether the defendant
8 used or attempted to use it.

9 And here, again, you'll have to think about whether
10 the defendant intended to use it. He planted it, ladies and
11 gentlemen. He obviously intended to use it.

12 And whether or not he took a substantial step towards
13 doing so. He walked that bomb from Penn Station down to 23rd
14 Street, back up to 27th Street and left it there. Numerous
15 substantial steps that satisfy the requirement for an attempt
16 for Count Two.

17 The remaining elements are straightforward. He left
18 it on 27th Street. So it was plainly used against a person
19 or attempted to be used against a person or property in the
20 U.S. Like the 23rd Street bomb, this was an improvised
21 explosive device. The defendant did not have authority to use
22 it. And, again, interstate commerce here includes
23 transportation, the trains.

24 Count Five charges the defendant with attempted
25 destruction of property by an explosive at 27th Street. So

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1 here you'll be asked to consider whether he used an explosive
2 in an attempt to destroy the property.

3 The black powder was an explosive, ladies and
4 gentlemen. The HMTD was an explosive. The way the defendant
5 configured it in the pressure cooker was a bomb, a bomb with a
6 detonator that he set to go off at 9 p.m. on September 17th.
7 That's why this element is satisfied.

8 Property here, as well, was used in interstate
9 commerce because of the shipments, the products that were
10 ordered to build these bombs.

11 And then here's the definition of maliciously. That
12 the defendant used the explosive with intent to cause damage or
13 harm or in reckless disregard to the likelihood of damage or
14 harm.

15 When you pack the number of ball bearings into a
16 pressure cooker bomb that the defendant did, you obviously
17 know, he obviously knew that if this bomb detonated it would
18 have hurt people and potentially kill them in the same way that
19 the bomb destroyed property and injured people on 23rd
20 Street.

21 So as you think about whether the defendant acted with
22 intent to detonate this bomb on 27th street I ask -- these
23 are the pieces of evidence that I ask that you consider. The
24 alarm was set. The defendant placed that bomb with an alarm to
25 make it go off. It was packed with shrapnel. This is a

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1 picture of some of the shrapnel that was inside it. And glued
2 together in a sheet just like *Inspire* magazine told the
3 defendant to do.

4 And then think about the letter. The letter doesn't
5 say bombs may be planted. I'm thinking about planting bombs.
6 I might get around to it. The defendant says "bombs will be
7 heard in the streets." He wrote "your people will hear the
8 bombs." The defendant wrote down his intent. He committed it
9 to writing in the letter.

10 And, lastly, when you think about whether the
11 defendant acted with intent to kill, with intent to destroy,
12 with intent to cause devastation when he planted the bomb at
13 27th Street, think about the steps that he actually took.
14 You need a pressure cooker. You buy 8,000 ball bearings. You
15 glue them together. Look at this. These are the ball
16 bearings, ladies and gentlemen. You glue them together based
17 on the guidance of a terrorist propaganda magazine. You pack
18 them inside with black powder and HMTD. You take a cellphone,
19 take it apart, take the vibrate motor out, solder wires onto
20 the phone, hook it up to a Christmas tree lightbulb, put the
21 cover on, caulk it shut, run the wires through this main hole,
22 set the alarm for nine o'clock. And you leave this on the
23 street. That's what he did twice. And he did it at 27th
24 Street knowing that that bomb worked at 23rd Street and that
25 the bomb had worked at Seaside. He knew that his cellphone

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1 detonators worked and he knew exactly what this would do.

2 And so when you're deliberating and you're asked to
3 consider whether this man intended to kill and harm and do
4 damage at 27th Street, think about the steps, the individual
5 steps that that actually required, to purchase these things, to
6 get them to Perth Amboy, to get them to his house, to make the
7 HMTD in his bedroom, to package this all together, to glue that
8 shrapnel together on the advice that it would cause more harm,
9 it would increase the potential that you would kill people.

10 And then think about the defendant. Think about that video of
11 him leaving this near the mailbox on 27th Street, hidden in a
12 bag so it looked normal, knowing that he had already detonated
13 a bomb at 23rd Street and he had already done another one
14 that morning in Seaside.

15 The defendant knew and intended that the 27th Street
16 bomb would go off and that's why he's guilty of the charges
17 relating to that device, the attempt charges, because he
18 intended to do it and he took numerous steps in furtherance of
19 that.

20 Let's talk about the third category of charges, the
21 ones that relate to the transportation, use, and possession of
22 these bombs. And these are some of the pictures that I asked
23 you to think about where the defendant is transporting bombs
24 through Penn Station in crowded areas around Penn Station.

25 So Count Six relates to the interstate transportation

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1 and receipt of explosives. And, again, you'll be asked to
2 consider whether the defendant transported an explosive.
3 You'll be asked to consider that term.

4 The defendant transported an ammonium nitrate
5 explosive in the 23rd Street bomb, black powder and HMTD in
6 the 27th Street bomb, and he also transported, let's not
7 forget about the backpack, similar substances, six additional
8 bombs strapped to his back walking through Penn Station. Did
9 he transport it in interstate commerce? New Jersey to New York
10 on the train.

11 And did he do so with knowledge or intent that the
12 explosive would be used to injure an individual or unlawfully
13 destroy a building, vehicle, or property? Absolutely.

14 Counts Seven and Eight relate to carrying a
15 destructive device in furtherance of a crime of violence.
16 These are additional charges that relate to the use, carrying,
17 and possession of bombs, additional charges intended to focus
18 on the conduct where the defendant was carrying these things,
19 transporting them around before he planted them, before he
20 planted them at the 23rd Street and before he planted the
21 bomb at 27th Street. You saw him do that on the video.

22 And so one of the things that you'll be asked to
23 consider is whether the defendant committed a crime of
24 violence. And so the crimes of violence that are charged are
25 Counts One, Three, and Four for 23rd Street and Two and Five

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1 for 27th Street.

2 And then the next element is whether the defendant
3 knowingly used or carried a destructive device during and in
4 relation to or knowingly possessed a destructive device in
5 furtherance of a crime of violence.

6 Ladies and gentlemen, when you consider this charge
7 think about the video of the defendant wheeling these bags
8 around to the locations where he planted them. Think about the
9 defendant wheeling the bags full of bombs through Penn Station
10 down Eighth Avenue. He plants the 23rd Street bomb, still
11 carrying the 27th Street bomb, walks back up Seventh to
12 27th and plants that one also. Consistent. He was carrying
13 in possession throughout the attack in Manhattan. He was
14 carrying in possession that, as I said in the beginning,
15 created grave additional dangers to all the people on the
16 street that night. Not just the people on 23rd Street, the
17 people on those avenues, the people in Penn Station, and that's
18 why there are additional charges relating to this conduct.

19 Now, ladies and gentlemen, I'm going to sit down
20 pretty soon. I'm just about done. Before I do that I want to
21 say a little bit about some of the defense arguments that
22 you've heard so far. As I've already said today, the defense
23 has no burden here. The defendant is presumed innocent. The
24 government has the burden of proof. We must establish that
25 he's guilty beyond a reasonable doubt.

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1 When arguments are made, again, you should scrutinize
2 them. Think about whether they make sense. And please think
3 about the defense arguments that are made in this case that
4 have been made already in this context. This is the guidance
5 from *Inspire* magazine about what to do in a situation like the
6 one the defendant is in right now. "Tips for our brothers in
7 the United States of America. Have a convincing cover story
8 for anything suspicious. The story needs to be good enough to
9 convince a jury if you ever get that far."

10 I submit to you, ladies and gentlemen, that the story
11 is not good enough. These are some of the arguments that
12 you've heard so far. In opening statement the defense tried to
13 characterize the evidence as tiresome and repetitive. We've
14 already talked about that.

15 You heard some cross-examination of Special Agent
16 Steven Fullington about whether Mayor DeBlasio and Governor
17 Cuomo were at the crime scene. That cross-examination was
18 designed to distract you, to distract you from the evidence
19 that was collected at that scene and the evidence that proves
20 that the defendant is the one who did this.

21 You also will recall that there was extensive
22 cross-examination of Special Agent Ken Leung about the way that
23 he safeguarded the 27th Street phone after Detective Hallik
24 removed it from the bomb. Ladies and gentlemen, that was also
25 a distraction because the next day Special Agent Jill Enyart

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1 testified and explained to you that she responded to that
2 scene, collected the phone, she was the evidence collection
3 person, and insured that it made it down to Quantico so that it
4 could be safely considered.

5 The arguments that have been presented to you so far
6 are intended, I submit, to distract you from the evidence, the
7 evidence in this case that proves that the defendant is guilty.

8 Ladies and gentlemen, I'm going to stop where I
9 started today. On September 17 of 2016 the defendant conducted
10 a multiphased terrorist attack, an attack that began in
11 Seaside, continued at 23rd Street, and on to 27th Street.
12 He built these bombs for months. He built them with the
13 guidance of terrorist organizations. He packed them with
14 shrapnel designed to kill as many people as possible. It is
15 nothing short of a miracle that no one died in this attack and
16 not in any way a defense for this man.

17 The defendant conducted these bombings. You know that
18 from the letter, from the video, from the fingerprints, from
19 the DNA, from the laptop, from the iCloud, from the evidence
20 from his house. At each and every step of this investigation
21 evidence was collected, evidence was obtained that proves that
22 this is the man who committed these crimes.

23 This is not a close case, ladies and gentlemen. The
24 evidence proves that the defendant is guilty beyond a
25 reasonable doubt of each and every charge in the indictment.

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1 We thank you for your time and attention up to this
2 point during the trial and today during my closing.

3 I ask that you follow Judge Berman's instructions on
4 the law. Listen to them carefully and apply them.

5 Use your common sense as your deliberate, the same
6 common sense that you use in your everyday lives.

7 As you think about a situation where a man was caught
8 on tape, with his fingerprints all over the bombs, his DNA all
9 over the bombs, bomb making instructions on the laptop, on the
10 iCloud, bomb residues in his house, if you apply your common
11 sense to that situation and follow Judge Berman's instructions,
12 then I submit to you that the only appropriate verdict is
13 guilty, guilty on all charges. Thank you.

14 THE COURT: Thanks, counsel.

15 So we're going to adjourn for today. So tomorrow
16 morning when you come, 9:15, as soon as we start we'll hear
17 from the defense. Then the government gets a brief rebuttal
18 after that. Then I will give you the instructions, the law
19 that applies in this case, and then you'll begin your
20 deliberations. So that will probably be sometime around
21 lunchtime. We'll give you menus in the morning and order lunch
22 for you for your lunchtime and deliberation.

23 So between now and then let me just remind you what
24 I've said just about everyday that you've been here.

25 First, please don't talk to each other about the case

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1 or about anyone who has anything to do with it until the end of
2 the case when you go to the jury room to decide or deliberate
3 on your verdict, which will be tomorrow.

4 Second, do not talk with anyone else about the case or
5 about anyone who has anything to do with it until the trial has
6 ended and you've been discharged as jurors. You remember I've
7 said that by talking I'm also referring to e-mailing, texting,
8 tweeting, or blogging. And I'm referring to any type of
9 communication in any type of forum including Facebook, MySpace,
10 Instagram, YouTube, etc., for example. And, additionally, do
11 not remain in the presence of other people who may be
12 discussing the case face-to-face orally or online. And anyone
13 else includes members of your family and your friends and
14 embraces social media. You may tell them that you are a juror
15 in a case but please don't tell them anything else about the
16 case until you've been discharged by me.

17 Third, do not let anyone talk to you about the case or
18 about anyone who has anything to do with it; and if someone
19 were to try and talk to you about the case, please report that
20 to Christine or me immediately.

21 Fourth, do not read any news or internet stories or
22 articles or blogs or listen to any radio or TV or cable TV or
23 internet reports about the case or about anyone who has
24 anything to do with the case.

25 Fifth, do not do any type of research or any type of

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1 investigation about the case on your own.

2 So, we've made very good progress and I'll see you
3 tomorrow morning. Thanks a lot.

4 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Please be seated for a minute.

3 Ms. Shroff, you will be up tomorrow morning; is that right?

4 MS. SHROFF: One of us will be.

5 THE COURT: One of you. Okay.

6 Then brief rebuttal from the government.

7 MR. DeFILIPPIS: Yes, your Honor.

8 THE COURT: So the jury instructions that we discussed
9 will be printed. It's my practice to make them available to
10 the jurors, to each juror. So there you have it. So see you
11 tomorrow. Thanks.

12 (Adjourned to October 13, 2017 at 9:15 a.m.)

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